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CITY

JOURNAL

Mark Steyn
Facing Down Iran

Nicole Gelinas
Houston's Noble Experiment

Steven Malanga
Killing New Jersey

Kay S. Hymowitz
Welfare Reform Ten Years Later

Philip K. Howard on Sane Civil Justice

David Schoenbrod on Sane Regulation

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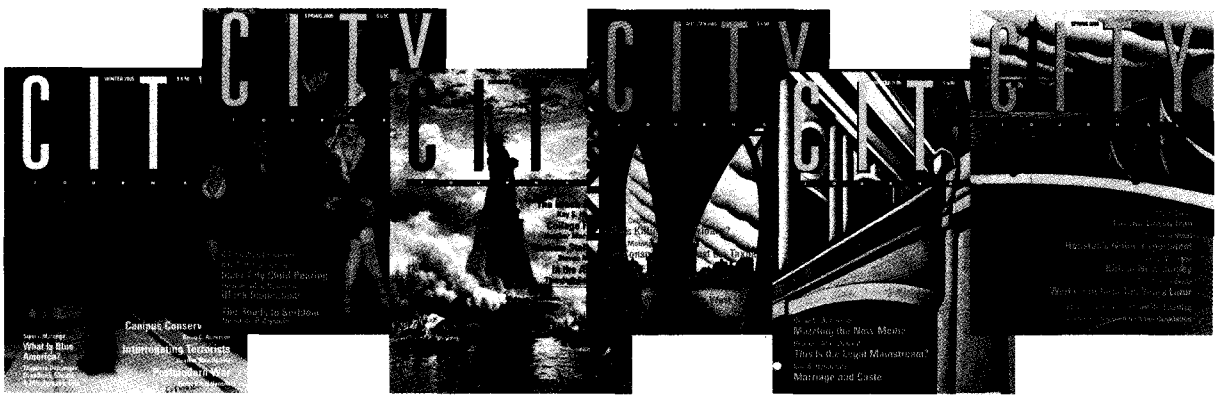

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In Prospect

The political genius of the Founders was to establish a government to protect citizens from foreign enemies and from the vices and ambitions of their fellow citizens, while also recognizing the need to limit that government, so that those same vices and ambitions in its officials could not turn it into an instrument of tyranny. Most articles in this issue explore that duality, shedding light on a paradox the Founders so nicely balanced.

Mark Steyn's "Facing Down Iran" (page 16) presents a new variation on what the Founders saw as government's first duty. When a country attacks us, we know we must defend ourselves—or at least usually we know: Jimmy Carter did nothing for the 444 days that Iran held U.S. hostages in our Tehran embassy. Doubtless that dithering persuaded Iran that we would always meet aggression with cowardice; and now, as we face Iran's nuclear threat, do we wait for the mullahs to carry it out, as Steyn predicts they will, or do we act preemptively? European governments may shirk their chief task, but, Steyn says, it's time for Washington to do the job.

As for the domestic oppression that worried the Founders, they had in mind something like what Steven Malanga describes on page 42, in "The Mob That Whacked Jersey." In the name of uplifting the poor in New Jersey's failed cities, corrupt politicians, uncontrolled by checks and balances, have piled taxes onto suburban commuters who moved to the state to escape Gotham's high levies, shoveling the money to pols in places like Newark and Camden. There it has done no measurable good to the poor but only to the pols and their union backers. No wonder suburbanites are leaving.

Also born out of the Great Society's crusade to rescue the poor, Medicaid has become another engine of corruption that would appall the Founders, as Malanga reports on page 82, with fraud accounting for up to $30 billion of the program's $300 billion cost. Cheats get away with it because pols don't want to look too closely into a money machine that enriches political supporters like healthcare unions and hospitals.

Even when corruption's not the problem, government overreaching beyond the limits the Founders envisioned does damage. For generations, the well-intentioned welfare system lured poor women to become trapped in the underclass. Limiting that system in 1996, Kay Hymowitz notes on page 54, sent over half those women to work and greatly shrank the extent of underclass neighborhoods—a huge public policy success. So, too, as David Schoenbrod shows in "Toxic Regulation" (page 74), even sensible regulations, such as FDA rules to protect health, exceed proper limits when they mandate not just ends but also means. The result has been to shrink the scope of innovative entrepreneurship, in favor of corporate giants with lawyers and lobbyists to deal with the the regulators. In a different way, Philip Howard argues in "Making Civil Justice Sane" (page 64), government has let individuals wield the power of the state against other individuals or firms way beyond proper limits through liability lawsuits, harming society as a whole. It's time, he says, for legislatures to direct judges to rein them in.

And how does government fulfill its primary mandate of protecting citizens on the streets and in their homes? Houston, which has taken in and housed 175,000 evacuees from hurricane-ravaged New Orleans, is finding that its guests, coming from a dysfunctional city with a broken criminal-justice system, are shooting up their new neighborhoods, as Nicole Gelinas details in "Houston's Noble Experiment" (page 28). Houston officials, mindful of their key function, are policing, trying, and jailing as they ought, to the shock of evacuee thugs—and perhaps their enlightenment. These and other exercises of proper government power, by contrast with New Orleans's failure, are making for a fascinating experiment in how much good government can uplift a population that bad government has helped to abase.

Finally, don't miss Theodore Dalrymple's "It's This Bad" on page 118. In a decadent England that has swiftly unraveled a thousand-year-old culture, youths can ruin respectable citizens' lives with impunity, while police enforce political correctness instead of their first duty. The Founders, in Enlightenment heaven, must be doubly glad they made the break.

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oundings

A Preemptive Surrender

Michigan Republicans are AWOL in the fight against racial preferences.

The Michigan Civil Rights Initiative, banning preferential treatment in the state based on race, gender, and national origin in government hiring and contracting and in public university admissions, has so far received relatively little national notice. Yet it may well prove the most significant contest on this November's ballot.

The nation's ninth-largest state, Michigan has been ground zero over the last decade in the fight against government-mandated racial preferences. Fiercely contested lawsuits, launched by white plaintiffs denied admission to the University of Michigan's undergraduate and law schools because of racial quotas favoring less qualified minorities, inflamed passions on both sides; and the Supreme Court's 2003 twin decisions in the cases basically splitting the difference—siding with the plaintiffs in one, the law school in the other—have set the stage for the MCRI showdown.

On the face of it, this seems to be history repeating itself. The MCRI is similar in both intent and language to California's 1996 ballot measure, Proposition 209, and Washington State's I-200 two years later. Withstanding opponents' charges that they aimed to turn back the clock on social justice and less-than-subtle campaigns to smear initiative supporters as racist, both those measures passed easily, by margins of eight and 16 points, respectively. In Michigan, early polls show support for the MCRI in the high sixties.

But several factors leave the outcome of the Michigan initiative—and with it the future of the fight against racial preferences—very much in doubt.

For starters, initiative proponents expect the other side to outspend them hugely. In an early 2006 filing, the MCRI had only $30,000 on hand, its funds depleted by the long struggle to get the measure on the ballot. And, it's important to note, the anti-preferences measures in both California and Washington suffered serious erosion in support once opponents began deluging the airwaves with highly misleading commercials. While the MCRI receives funding primarily from individual donors, the Big Three automakers, among other corporate entities, are likely to play a major role in financing the opposition.

"It's completely cynical," observes California businessman Ward Connerly, a prime mover behind the earlier initiatives. "While they're cutting jobs left and right, they'll be proclaiming their commitment to diversity by opposing this initiative." In addition, he says, "They're being browbeaten by the likes of [powerful Michigan congressman] John Dingell, whose wife is a VP for General Motors."

The prime beneficiary of corporate largesse in this battle to date is the broad coalition of union, civil rights, and women's groups calling itself One United Michigan. The coalition fought a bitter holding action to keep the MCRI off the ballot, charging, among other things, that blacks who signed the MCRI petitions were misinformed of its intent. Joining them in the campaign to stop the MCRI is the more radical group By Any Means Necessary; in December, it shipped busloads of Detroit teens to Lansing, the state capital, where they violently disrupted a state board of canvassers meeting set to certify the MCRI petitions. Overturning furniture and screaming invective at the canvassers, the teens forced the meeting's cancellation. The MCRI supporters had to go to court to have it placed on the ballot.

Nearly as much a target of By Any Means Necessary's vitriol as alleged race-traitor Connerly is MCRI executive director Jennifer Gratz, one of the original plaintiffs in the University of Michigan lawsuit; during the board of canvassers melee, the teens actually unfurled a KKK banner alongside her for photographers' benefit. And Gratz—young, articulate, and attractive—is indeed the MCRI foes' worst nightmare. In addition to being a living, breathing advertisement for the injustice of affirmative action—the daughter of a retired police sergeant from a working-class Detroit suburb, she couldn't get into the University of Michigan, despite graduating near the top of her class—she gives the lie to the claim that preference programs advantage women. "Everyone on the other side is out to confuse the issue," she says. "BAMN is pretty ugly, but

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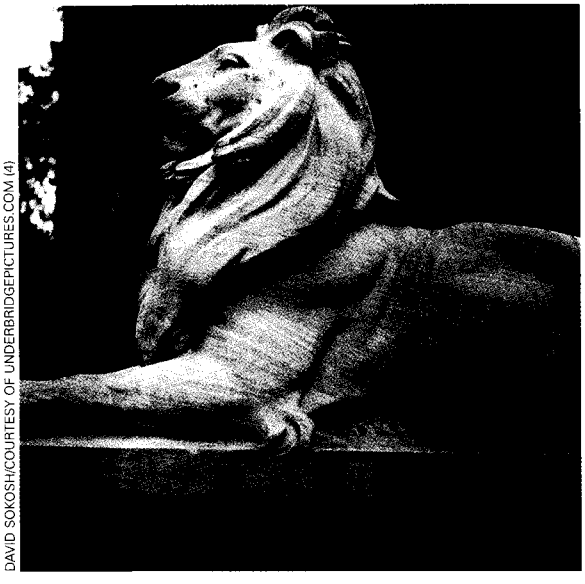
One United Michigan also builds their campaign around outright lies, saying this will eliminate domestic-violence shelters. They always try to make this a debate on gender rather than race. And, of course, they always try to portray us as 'radical' and 'out of the mainstream.' "

In fact, this last ploy is central to the strategy of the MCRI's foes, and they've received help in pulling it off from seemingly unlikely allies: leading state Republicans. Announcing his opposition to the MCRI, the GOP's gubernatorial candidate, Amway heir Dick DeVos, an otherwise reliable conservative, declared: "We must look for ways to unify and provide equal opportunity for all people in our state." Two of the three candidates seeking the Republican senate nomination have followed his lead.

Most observers view this stance as a political calculation: Republican candidates prefer to run in this economically devastated state on bread-and-butter issues and not arouse the solidly Democratic black base. But Republican opposition to the MCRI winds up touted by the initiative's foes and cited in almost every news account. The contrast with, for example, California, where then-governor Pete Wilson took a leading role in the fight for Prop 209, could hardly be starker.

Ward Connerly, for his part, is scathing about what he sees as the GOP's desertion of principle. "The bottom line is, they're scared of race—not just in Michigan, but nationally. They're so afraid someone will call them 'racist' or 'mean-spirited' that they just reflexively align themselves with 'diversity,' " Connerly says. "What voters have to ask is, if candidates have so little character on an issue as basic as this one, on what other issues will they cut and run when the going gets tough?" Moreover, he adds, those Republicans AWOL on racial preferences are "lousy politicians," since it's so demonstrably a winning issue.

Michigan may well test that assumption. Jerry Zandstra, the least known of the three long-shot candidates running in the August primary to challenge incumbent Democratic senator Debbie Stabenow, is also the only one supporting the MCRI. A minister and economist on leave of absence from the conservative Acton Institute, Zandstra started out with almost no money and with ratings in the single digits, but has risen steadily in the polls. "When I came out in favor of this, I didn't know what the poll numbers would be. But I'd re-read the U.S. Constitution, the Fourteenth Amendment, Michigan's constitution, and the '64 Civil Rights Act, the speeches of Dr. King, and it seemed perfectly clear."



DAVID SOKOSH/COURTESY OF UNDERBRIDGEPICTURES.COM (4)

Why, then, he's asked, do so few in the party leadership seem to get it? He considers a moment. "Funny, isn't it, the people seem to be ahead of the politicians on an awful lot of issues."

—Harry Stein

Downtown Rising

Despite Pataki and Bloomberg, the private sector is fixing lower Manhattan.

One skyscraper—Seven World Trade Center—is New York's sole triumph over 9/11. It's a stunning piece of work. Who built Seven? Not Governor Pataki or Mayor Bloomberg, but private-sector developer Larry Silverstein, who completed the 52-story tower while the pols dithered over 16 scarred acres across the street.

Silverstein could build Seven so quickly—replacing the office building of the same name he owned before 9/11—because it's adjacent to the World Trade Center site, not part of it. Thus, Silverstein's lease with the Port Authority of

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New York and New Jersey, the bistate entity that owns Ground Zero, doesn't govern the site. Free from the government "direction" that has overseen Ground Zero redevelopment, Silverstein did what he does best: he built.

In doing so, he proved, as if it needed proving, that private-sector ingenuity can solve difficult problems: Silverstein had to build Seven World Trade Center around a new Con Ed substation, to replace one destroyed on 9/11. Naysayers said that Seven would therefore be a windowless box at street level, unfriendly to pedestrians. Undeterred, Silverstein's architect, David Childs, encased the bulky substation in an elegant stainless-steel shell that complements the glass skyscraper above, and he covered it with a delicate light show that will draw pedestrians' glance. It works.

Silverstein built Seven on spec, with no prospective tenants except himself. Lenders ran the risk that his optimism about downtown wouldn't pan out. (While the Liberty Bonds that Congress authorized to speed lower Manhattan's recovery provided most of Seven's financing, the government doesn't guarantee those bonds; they're merely tax-exempt.) The critics gave plenty of reasons why Silverstein's optimism was foolish. Nobody wants to work downtown anymore, they said; post-9/11, nobody will go up in the sky in a building called the World Trade Center.

But guess what? Silverstein has found tenants for Seven's top five floors. They'll occupy 20 percent of the tower when it opens in May, paying $50 per square foot, the highest rate downtown.

Seven World Trade Center does have drawbacks. The building boasts spectacular views—views that disappeared after 9/11 until today. But one is of Fiterman Hall, a City University building that burning debris half destroyed on 9/11. The city and state have allowed Fiterman Hall to fester. Every time it rains, mold further contaminates the building. Another view is of the old Deutsche Bank tower, also contaminated on 9/11. The state is responsible for razing it, but it still stands. A third view is of Ground Zero. But looking straight down at Ground Zero from the top floor of Seven, it's possible to view it not just as a sad reminder of New York's political incompetence in rebuilding from 9/11 but as a construction site and the anchor of a twenty-first-century neighborhood.

From Seven's top floor, one can see all of downtown's real estate—and much of it is old. Besides Seven, the World Financial Center provides much of lower Manhattan's modern office space. But when the rest of the new World Trade Center towers finally rise, the WFC will be 35 years old. Meanwhile, many of downtown's office buildings are fast becoming obsolete for office space; owners are converting them into condos.

It's good that downtown is no longer just a business district. But it's bad for New York's growth if new office towers don't replace the ones disappearing from the market.

Other than Seven World Trade Center, tenants forced out of obsolescent space downtown have three choices: high-priced midtown, the World Financial Center (far from transportation), and New Jersey. Once Ground Zero's four modern office towers are completed, they'll have another choice: midtown-style towers close to transportation.

By finishing Seven, Silverstein has replaced with hope the dread that infused lower Manhattan after 9/11. Yet pols and the press condemn him—because he's in the private, not the public, sector.

When negotiations over a revised lease at Ground Zero broke down in March, Port Authority chief Charles Gargano called Silverstein "greedy." Pataki said Silverstein had "betrayed the public trust." The *New York Times* published an editorial called "Greed vs. Good at Ground Zero," castigating Silverstein for failing to "think beyond the . . . bottom line here."

Gargano and Pataki should be ashamed of their slander of Silverstein, who has been nothing but patient as they and Mayor Bloomberg have turned Ground Zero into a political swamp. As for the *Times*: of *course* Silverstein must think of the bottom line. If he doesn't earn money, he can't build more breathtaking buildings like Seven. That's how the private sector works. The *Times* fails to explain why it is bad for New York that Silverstein actually wants what goes up at Ground Zero to succeed.

When the critics aren't condemning Silverstein, they're deriding his optimism downtown.

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But they should remember: when the new World Trade Center is finished, nearly 20 years will have elapsed since 9/11. Manhattan's workforce is an army of young people. To workers in their twenties and thirties in 2020 and beyond, 9/11 will be something that happened in childhood—or in history. The remote horrors of 9/11 will take a backseat to spectacular views.

It's past time for pols who use 9/11 to increase their power over the city's private-sector future to get out of the way, so that this future can take shape. —*Nicole Gelinas*

Lawyer Lead-ership

The plaintiffs' bar's paint profits.

In its quest for profits, America's trial bar keeps finding new potential defendants, new theories of liability, and new ways to manipulate the political system. The lawyers' latest targets, paint manufacturers, find themselves under fire for lawfully making lead-based paint 30 to 50 years ago.

Concerns that such paint causes lead poisoning in children have led many states and localities to adopt "abatement" regulations, as any New York homeowner, landlord, or tenant well knows. The trial lawyers' new suits do not seek redress for injured children, however, but rather for the state, under the theory that lead paint generated a "public nuisance" and that the state needs money to clean it up in an estimated 240,000 contaminated homes. If this theory brings to mind the state-sponsored suits that led to the multibillion-dollar tobacco settlement, it should, because the tactics, and even some of the key players, are the same.

Last month, the lawyers hit pay dirt when a Rhode Island jury found three paint companies—Sherwin-Williams, NL Industries, and Millennium Holdings—liable to the state. Before getting to the seedy details, let's start with the scientific facts. Unlike tobacco, lead paint is a minor public health problem at worst. Yes, we now know that lead poisoning can impair children's neural development, though the level of risk is open to debate. Safety concerns resulted in the relegation of lead paint to outdoor use as early as the 1950s; by 1978, laws had banned it entirely.

Since the late 1970s, blood lead levels in children have fallen dramatically, owing partly to reduced lead-paint exposure, but mainly to the virtual elimination of lead in drinking water and automobile gasoline. Just how much safer are our kids today? Using the cautious threshold pushed these days by the Centers for Disease Control (ten micrograms per deciliter, much tougher than the 25-microgram level established for lead poisoning 15 years ago), the percentage of young children with elevated blood lead levels has fallen 98 percent. The most recent estimates from the National Health and Nutrition Examination Surveys show only 1.6 percent of children aged one to five above the CDC threshold, a far cry from the 77.8 percent who failed to meet the CDC's current standard in the late 1970s.

Such figures should be cause for celebration. But zealous public health advocates—often trial bar–funded—have continued to press for ever-lower lead exposure levels. In long-developed areas, such as northeastern cities, the presence of lead paint is substantially higher than in many parts of the country. But large local variations suggest a clear regulatory remedy. For instance, one study found that Providence, Rhode Island's children had three times the lead-poisoning level of those in nearby

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Worcester, Massachusetts. Unlike Rhode Island, Massachusetts requires that landlords abate lead paint in homes with children.

Rather than making low-income landlords clean up their act, however, Rhode Island chose to sue the companies that long ago legally manufactured lead paint. Notwithstanding the state's nominal position as plaintiff, it's important to realize that the trial bar itself is the driving force behind the lead-paint lawsuits, as it was when the states sued tobacco companies. Fittingly, the central player in the Rhode Island paint suit is the law firm of Ron Motley, one of the principal attorneys behind the tobacco suits. For its role in the Rhode Island lawsuit, Motley's crew stands to take home nearly 17 percent of any settlement.

How did Motley do it? Much in the same way that he and attorney Richard Scruggs scored the tobacco litigation: by co-opting political leaders. In the tobacco cases, Scruggs persuaded attorney general Mike Moore, his fellow Mississippian, to hire him and Motley to sue tobacco makers for smoking-related medical costs—after Scruggs contributed generously to Moore's campaign and flew him around for appearances in his private jet.

Motley has followed Scruggs's tobacco playbook to the letter. A South Carolinian, Motley began to take a keen interest in Rhode Island's notoriously corrupt politics. Opening an office in Providence, Motley's partner John McConnell became the state's Democratic Party's treasurer. In the 2000 election cycle, their firm was the state's largest political contributor, with over $500,000 for federal campaigns alone. Perhaps not so coincidentally, Rhode Island attorney general Sheldon Whitehouse appointed Motley's firm to be the state's lawyers to sue paint manufacturers.

The resulting Rhode Island verdict makes a mockery of the basic principles of tort law. Typically, to win a lawsuit, there needs to be an injured party. Not here, where not a single injured party—or a single house constituting a "nuisance"—made it into the evidence. Typically, for liability, a plaintiff needs to show that the defendant caused its harm. Not here, where the judge instructed the jury that it could find the defendants guilty without even finding that any of the paint companies had manufactured any paint actually used in the state.

It's not yet clear how much the paint companies will have to pay Rhode Island. The good news is that the judge determined that the paint companies owe no punitive damages. Press reports and market reaction to the case have focused on that significant fact, not on the key finding of liability—which shows just how skewed the expectations for our legal system have become.

What's certain is that trial lawyers smell blood in the water, and other state attorneys general see an opportunity for cash. In addition to pending cases in New Jersey, Wisconsin, and Illinois, Massachusetts and Connecticut are now exploring paint suits, with the trial lawyers in the lead.

—*James R. Copland*

A Fifth Column in the Prisons?

Let's keep firebrand Muslim clerics away from prisoners.

Last April, according to the *New York Post*, Gotham's top jails chaplain, Imam Umar Abdul Jalil, told a Muslim student conference in Tucson that Muslims were undergoing torture in a New York City correctional facility, that the world's "biggest terrorists" occupied the White House, that Muslims cannot allow "the Zionists of the media to dictate what Islam is to us," and that the Koran commands Muslims to be compassionate with one another but "hard against the *kufr* [unbeliever]." After briefly suspending Jalil—with pay—Mayor Michael Bloomberg reinstated him, saying, "As Americans we should never pander to xenophobia, anti-intellectualism, or convention. We must never be afraid of free speech or multiculturalism—the genesis of America's founding. And we must never use the war on terror, or political correctness, as the pretext for stifling political speech."

Multiculturalism? Stifling political speech? The mayor seems to be confusing an academic First Amendment debate with a critical security issue—keeping America's jails and prisons free of radical Islamic ideologues. Radical Islam is a real and growing presence behind bars; officials shouldn't help expand its influence.

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Jalil is the second New York Muslim prisoners' chaplain to come under fire for voicing extremist opinions. Three years ago, the *Wall Street Journal* revealed that the former chief imam of the New York State prison system thought that the 9/11 hijackers were holy martyrs. "Even Muslims who say they are against terrorism secretly admire and applaud [the September 11 attackers]," he told the *Journal*. He also argued that the Koran doesn't forbid terrorism against enemies of Islam and that "this is the sort of teaching they don't want in prison. . . . But this is what I'm doing." (In 2005, in another case, the Fire Department asked for, and got, the resignation of department chaplain Intikab Habib after he expressed doubts that al-Qaida was responsible for destroying the World Trade Center, hinting that a "conspiracy" was to blame.)

U.S. counterterrorism officials have known for several years that al-Qaida views the U.S. prison population as a fertile source for recruiting homegrown terrorists—the kind that slip through security measures designed to catch foreign *jihadi*. Would-be "dirty bomber" Jose Padilla, for instance, was a former Chicago gangbanger who converted to radical Islam in prison and traveled to Afghanistan for jihad training. Many observers believe Islam to be the fastest-growing religion behind bars, particularly among black convicts; Muslim prison gangs are proliferating. On some estimates, as much as 20 percent of the New York state prison population may be Muslim.

Last August, police in Torrance, California, disrupted the first known prison-based terrorist cell in the U.S., Jamiyyat Ul Islam Is Saheeh (JIS). California prosecutors indicted JIS cell leader Kevin James, along with Levar Haney Washington and two other prisoners, for plotting to attack U.S. military bases, synagogues, and Israeli government offices in and around Los Angeles. Washington converted to Islam while incarcerated and joined JIS in 2004, swearing loyalty to James "until death by martyrdom."

When Washington went free on parole in late 2004, James ordered him to recruit new members on the outside and plan terrorist attacks with them. To raise funds for attacks, Washington and two recruits robbed 11 gas stations across Southern California before their arrest.

The discovery of the JIS cell was a red flag for California law enforcement. Says Mark Leap, commanding officer of the Los Angeles Police Department's Counter Terrorism and Criminal Intelligence Bureau: "A year ago, we didn't consider the state or federal prison populations a serious terrorist risk. Now we're acutely aware of the problem." LAPD counterterrorism officers are now working with state and federal prison officials to identify the ideology and tactics of radical Islamic prison gangs and communicate potential threats to the LAPD and the Los Angeles Joint Terrorism Task Force.

The real challenge, Leap explains, is changing how prison intelligence officials view the prison security environment. "Radical Islamic groups don't receive" the same kind of attention that the officials give to other prison gangs, because the Muslims aren't generally violent *in prison*. As a matter of fact, he says, the opposite may be true. Asked if he thought that police across the country were aware of the dangerous potential of these gangs, Leap voices concern. "*We* are. I'm not sure how many other departments are."

Prison officials add fuel to the fire when they hire Muslim chaplains or other contractors sympathetic to radical causes, and nothing suggests that they're guarding against the possibility. In a report

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a while back, the Department of Justice's inspector general found that the Federal Bureau of Prisons lacked adequate background and ideology checks on its Muslim chaplains, religious-service contractors, and volunteers, to prevent radical groups from penetrating the system. Given that Saudi Arabia has spent millions funding the spread of the radical Wahhabi version of Islam in the U.S., building or taking over hundreds of mosques and opening training centers for imams across the country, a blasé attitude about background checks all but guarantees that radicals will make it into the system.

Congress of Racial Equality chairman Roy Innes thinks that politicians are ducking the problem. "Policymakers aren't taking action against these preachers of hatred, because they are using race and Islam as a cover. We're not going to tackle this issue until we have an honest public debate." Jalil's remarks offered Mayor Bloomberg a perfect opportunity to open such a debate. Too bad he made it into a First Amendment flap and ended the discussion. —*Paul Howard*

Anti-Semitism Without Anti-Semites

Britain's leading paper omits a key detail about attacks on French Jews.

Britain has only one important newspaper: the left-wing *Guardian*. Not only is it the sole remaining daily newspaper in the country whose content is mostly devoted to serious matters, but it is the only one that the unacknowledged legislators of the world, the intelligentsia, take seriously.

And this is a disaster for the country. Though it occasionally allows a dissenting voice, the *Guardian* has consistently advocated a demoralization of the population, followed by increased state intervention and, of course, public spending to alleviate the consequences of that demoralization. No wonder the BBC advertises for personnel exclusively in its pages.

An aura of dishonesty and evasiveness often surrounds its content. A recent article on the rise of anti-Semitism in France illustrates this mendacity perfectly. Not surprisingly, the article mentioned the case of Ilan Halimi. This is how the piece summarized it: "Last month, a Jewish telephone salesman, Ilan Halimi, was tortured to death in an apartment block south of Paris by a large multi-racial gang who kidnapped him for ransom. They allegedly singled him out because he was Jewish and 'Jews were rich.'"

And that is all.

The article also cites other cases. One young man tells the newspaper why he has not traveled on the city or suburban trains for four years: "I look very Jewish. I have a beard, I wear a hat and a black suit. It's not worth it." The newspaper adds that he had faced verbal abuse in the street for being Jewish. Another story: "Raphael Taieb, 26, was wearing a cloth skullcap on his way to synagogue but usually removed it in public. 'I've been stoned by children from apartment block windows for wearing it before.'"

What happened after the demonstration that followed the discovery of Ilan Halimi's tortured and murdered body? This is what the *Guardian* reports: "It was then that the attacks on young Jewish men in Sarcelles began—three in 24 hours, including a rabbi's son who had his nose broken, and two other men wearing cloth skullcaps who were reportedly called 'Dirty Jews.'"

We learn that the Jewish community in Sarcelles "is made up largely of second-generation North African Jews," many of whose "relations speak Arabic and are used to living in mixed societies, but in France they feel singled out for their religion."

And that is about all. The article treats anti-Semitism in France (which, of course, has a very long history) as if it were a meteorological condition now affecting the entire country, an impersonal force.

Because of this abstraction, the newspaper does not need to inform us who, exactly, threw the stones out of the window—and are stones normally found in apartment buildings?—or who broke the rabbi's son's nose. The information about the gang that killed Halimi is scanty, to say the least. If the body of a young black man tortured to death had turned up in Britain, and the white thugs who had done it were discovered,

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you may be sure that the *Guardian* would report it in full (and rightly so).

We are to believe, it seems, that the troubles of the North African Jews began when they came to France—and that, of course, raises the interesting but unasked question of why they came in the first place. Could it be, moreover, that having fled North Africa for France, North Africa then followed them to France? Heaven forbid that we should even let such a thought cross our mind, let alone ask it. Best, then, to keep silent.

The startling incuriosity about the perpetrators of the anti-Semitic attacks—were they French postmen, perhaps, or farmers or bankers or schoolteachers or simply a random sample of the French population?—suggests that both the writer of the article and the editors are avoiding something they had rather not acknowledge: the need to think, in particular about the unrealistic presuppositions of their entire worldview.

Not "All the news that's fit to print," but "None of the news that disturbs our liberal smugness and sense of moral superiority," is the motto of the *Guardian*.

—Theodore Dalrymple

Criminal Negligence

The feds are paying to rebuild New Orleans on a civic swamp.

In the months after Katrina, violent crime took a holiday from New Orleans. One of the few good things about living there after the storm, residents told reporters, was that for the first time in decades the streets seemed safe. But horrific violence is seeping back into the Big Easy, and the feds appear unconcerned that they're spending billions to rebuild physical infrastructure in a city with no functioning criminal-justice infrastructure—before Katrina or after.

Take just one March weekend, which proved that while Katrina transformed New Orleans forever, some things never change. On March 18 and 19, three New Orleanian males were shot to death in separate incidents. Murder One took place in the Iberville public-housing complex, just weeks after the city's housing authority allowed some residents to move back in. The scene

of Murder Two: a "second line" parade, a rich African-American tradition revived to lure evacuees back to New Orleans. Murder Three: a robber accosted and killed his victim on a quiet street.

It's unsurprising that post-Katrina New Orleans would find itself plagued by murder. Before Katrina, the Big Easy's arrest, prosecution, conviction, and sentencing rates were shamefully low, explaining why New Orleans suffered from the highest per-capita homicide rate of any large city in the nation. But this protracted failure of leadership in dispensing justice didn't wash away with the storm. New Orleans's unique version of justice is back along with the murderers, because state and city officials haven't attempted to reform their broken justice system.

Consider the story of 19-year-old Jamal Watson, formerly of New Orleans's Lower Ninth Ward. More than a year before Katrina, Watson participated in what local prosecutors charitably called an armed robbery. The robbery ended in the shooting death of an innocent man, Nathaniel Robertson, Sr., who fled down Jourdan Street in a failed bid to escape the five robbers who had demanded his truck.

The homes and inhabitants of Jourdan Street are gone now. But Robertson's death still demanded a measure of justice. The failed New

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Orleans law-enforcement system wasn't likely to achieve that before Katrina, and it certainly didn't achieve it after. Instead, prosecutor and judge alike have treated Watson's case as one might treat a nuisance misdemeanor charge.

Of the five suspects who accosted Robertson in 2004, none ever faced charges for his murder. Watson, one of two men indicted before Katrina for the armed robbery, spent the months after Katrina in a Louisiana jail, following the evacuation of Orleans Parish Prison. In late January, the New Orleans *Times-Picayune* reports, a judge freed Watson with prosecutors' assent after he pleaded guilty to simple robbery and took a sentence of time served. "OK, Jamal Watson," the sentencing judge intoned, closing the case. "Good luck to you, man." Watson now lives in Kentucky with his mother.

One might chalk this miscarriage of justice up to prosecutors' difficulty in lining up testimony against Watson after Katrina washed out most of those who lived in New Orleans, save for the fact that even before Katrina, they hadn't made any headway in the case for more than a year, having dropped charges against Watson's codefendant last April.

But New Orleans did put at least one person in jail after Katrina: its criminal-court clerk. In early March, after a week of ducking an arrest warrant, Kimberly Butler went to jail for three days for contempt, in part for defying a judge's order to cooperate with a former colleague appointed by the state to salvage an evidence room in a flooded downtown building. The judge couldn't simply fire Butler for her alleged insubordination, as she is an elected official.

New Orleans could have spent late February and early March having a public discussion on how to reform its criminal-justice system. Then, it might credibly ask for emergency federal funding to pay the lawyers, judges, and support staff needed to process thousands of pending cases, including more than 40 capital cases, most of them opened before Katrina, as a good start toward showing evacuated citizens unsure about coming back that it is equipped to deal with the criminals who commit crimes after Katrina.

But, again, as with everything else in New Orleans post-Katrina, city officials haven't risen to this difficult task. Instead, they spent weeks caught up in Butler's political drama.

This is a shame. In the years before Katrina, New Orleans had slowly lost thousands of its productive middle-class citizens—black and white—to functional cities, because it couldn't keep murderers behind bars. To escape Katrina, nearly all of the middle-class citizens left in New Orleans fled to other cities; most are still living elsewhere. New Orleans won't get those citizens back until it can assure public safety.

As 31-year-old James Javers, an evacuee who came back to New Orleans to watch the violence-marred March parade, told the *Times-Picayune*: "Look at this. . . . We need the National Guard [back] in here. Katrina was a call to wake up, but we still haven't woke up."

—*Nicole Gelinas*

How Not to Fix Health Care

Mandating private-sector health-care coverage is a bad idea.

In January, the Democrat-dominated Maryland state legislature overrode Republican governor Bob Ehrlich's veto and enacted the country's first so-called Wal-Mart bill. The measure requires employers with 10,000 or more workers—Wal-Mart is the only one in Maryland—to spend at least 8 percent of their payroll on health insurance. The new law has prompted the introduction of similar health-mandate bills in dozens of other state capitals, many targeting not just Wal-Mart but other firms, as well. In Maryland itself, legislators followed passage of the Wal-Mart law with proposed legislation that would expand health-care mandates to *all* businesses. Smaller firms would have to spend at least 4.5 percent of their payrolls on health insurance. The head of New York's Republican-controlled state senate said he'd seriously mull over a Democrat-sponsored measure that would compel all businesses with 100 or more workers to offer health insurance.

It's easy to see why politicians are jumping on the health-mandate bandwagon. Surveys show that a growing number of low-wage workers are enrolling in government-subsidized

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health-care plans like Medicaid and its offshoots. A study in Washington State, for instance, found that thousands of workers from Wal-Mart, Safeway, Target, and other large retailers had signed up for Medicaid and a similar state program, Basic Health. The flood of new recipients, in Washington and elsewhere, is driving up state costs, crowding out other spending. Health mandates seek to move such costs back to the private sector.

Yet while rushing to embrace mandates, legislators ignore how their own state policies have encouraged the shift to government insurance. By expanding government health coverage, first of all, states have made it easier for workers to leave private insurance plans. Economists have long recognized that increasing government health care reduces private insurance rolls. A 1995 study by Harvard and MIT economists estimated that the dramatic expansion of Medicaid from 1987 through 1992—a period that saw broadened eligibility for children—spurred a flight from private insurance, as workers joined employer-sponsored plans less often and some already-enrolled workers dropped their private plans.

More recently, after the Clinton administration and a Republican-controlled Congress allowed states to *double* the income level at which one can qualify for Medicaid, thousands of private-sector workers migrated over to government plans in California, New Jersey, Washington State, and other states. States also crafted insurance programs to cover workers at even higher income levels, with similar results. The Maine Heritage Policy Network, a state think tank, reports that some 6,000 of the first 7,600 enrollees in Maine's subsidized Dirigo health plan "simply traded their private health insurance" for the state plan, at taxpayer expense.

The trade-off is easy to understand, because many public insurance plans simply offer better deals—requiring no contribution on workers' parts, for instance, while 85 percent of private workers with employer-provided health coverage must pay a portion of premiums. Most businesses, especially small firms or those in low-margin industries like retailing, can't compete with the benefits now offered in government plans—all the more so because states are doing so much to jack up the cost of private insurance. Health-care-related tax hikes and regulations requiring private plans to offer specific services have squeezed bottom lines and thus forced firms to scale back benefits and increase co-payments.

Take New York State, where regulations and taxes impose a particularly heavy burden on private insurance costs. New York State subsidizes the cost of graduate medical education at the state's big teaching hospitals by levying a tax on private insurance policies. In New York City, that tax comes to about $400 per policy—a gift to the hospitals. The state also levies an 8.18 percent tax on hospital bills to subsidize charity care in hospitals. (Health insurers must also pay their own separate taxes, including a special assessment to subsidize the operations of the state's insurance department.)

More onerous still, New York, often responding to political pressure from special interests, piles on regulations that force businesses to offer specific treatments, at added cost. Several years ago, for example, the state began requiring all policies to pay for expensive treatments for infertile couples—hardly a life-threatening condition—because of pressure from New York's Orthodox Jewish community, heavy users of those services. But the fertility mandate is just one of 35 such regulations in the state. Together with the health-care taxes, they enlarge the cost of private insurance in New York by some 15 to 20 percent, a huge additional bill in a state where the average cost of family insurance is over $10,000 a year.

Legislators remain unsympathetic to the load they're imposing on employers. In announcing his willingness to consider a broad health-coverage mandate, New York state senate majority leader Joe Bruno excoriated businesses that he claimed were living off the public dime by not offering health benefits. A former business owner who once sympathized with the plight of firms in overtaxed and regulated New York, Bruno should acknowledge where the real problem lies. But like too many lawmakers seeking union support, Bruno proved willing to bash businesses while disregarding real solutions. America's health-care crisis won't get any better until legislators own up to how they've helped create it.

—*Steven Malanga*

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Facing Down Iran

Our lives
depend on it.

Mark Steyn

Most Westerners read the map of the world like a Broadway marquee: north is top of the bill—America, Britain, Europe, Russia—and the rest dribbles away into a mass of supporting players punctuated by occasional Star Guests: India, China, Australia. Everyone else gets rounded up into groups: "Africa," "Asia," "Latin America."

But if you're one of the down-page crowd, the center of the world is wherever you happen to be. Take Iran: it doesn't fit into any of the groups. Indeed, it's a buffer zone between most of the important ones: to the west, it borders the Arab world; to the northwest, it borders NATO (and, if Turkey ever passes its endless audition, the European Union); to the north, the former Soviet Union and the Russian Federation's turbulent Caucasus; to the northeast, the Stans—the newly independent states of

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Ayatollah Khomeini, right, announced that Islam could fill the ideological vacuum left by Communism's collapse.

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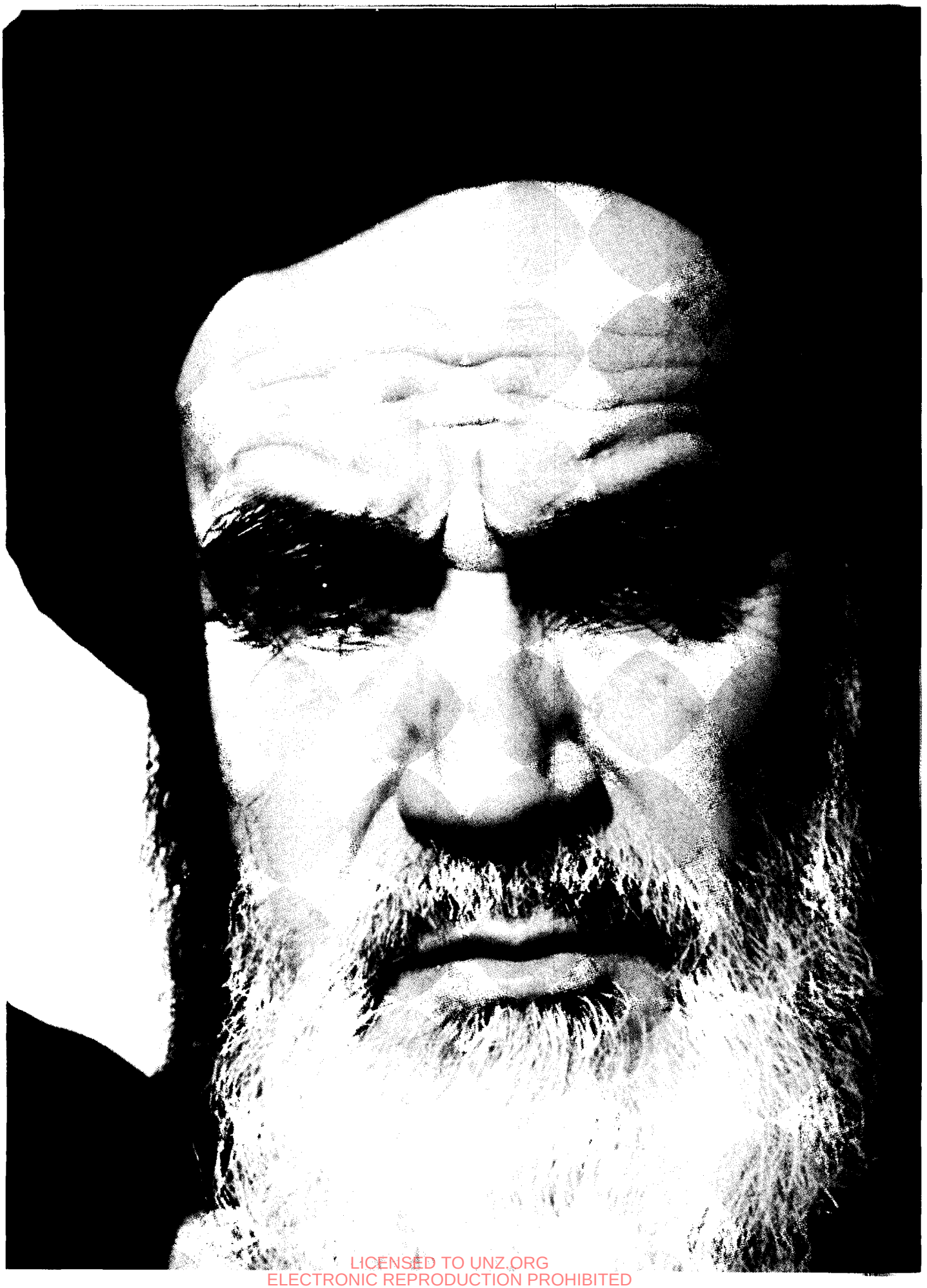

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central Asia; to the east, the old British India, now bifurcated into a Muslim-Hindu nuclear standoff. And its southern shore sits on the central artery that feeds the global economy.

If you divide the world into geographical regions, then, Iran's neither here nor there. But if you divide it ideologically, the mullahs are ideally positioned at the center of the various provinces of Islam—the Arabs, the Turks, the Stans, and the south Asians. Who better to unite the Muslim world under one inspiring, courageous leadership? If there's going to be an Islamic superpower, Tehran would seem to be the obvious candidate.

That moment of ascendancy is now upon us. Or as the *Daily Telegraph* in London reported: "Iran's hardline spiritual leaders have issued an unprecedented new fatwa, or holy order, sanctioning the use of atomic weapons against its enemies." Hmm. I'm not a professional mullah, so I can't speak to the theological soundness of the argument, but it seems a religious school in the Holy City of Qom has ruled that "the use of nuclear weapons may not constitute a problem, according to sharia." Well, there's a surprise. How do you solve a problem? Like, sharia! It's the one-stop shop for justifying all your geopolitical objectives.

The bad cop/worse cop routine the mullahs and their hothead President Ahmadinejad are playing in this period of alleged negotiation over Iran's nuclear program is the best indication of how all negotiations with Iran will go once they're ready to fly. This is the nuclear version of the NRA bumper sticker: "Guns Don't Kill People. People Kill People." Nukes don't nuke nations. Nations nuke nations. When the Argentine junta seized British sovereign territory in the Falklands, the generals knew that the United Kingdom was a nuclear power, but they also knew that under no conceivable scenario would Her Majesty's Government drop the big one on Buenos Aires. The Argie generals were able to assume decency on the part of the enemy, which is a useful thing to be able to do.

But in any contretemps with Iran the other party would be foolish to make a similar assumption. That will mean the contretemps will generally be resolved in Iran's favor. In fact, if one were a Machiavellian mullah, the first thing one would do after acquiring nukes would be to hire some obvious loon like President Ahmaddamatree to front the program. He's the equivalent of the yobbo in the English pub who says, "Oy, mate, you lookin' at my bird?" You haven't given her a glance, or him; you're at the other end of the bar head down in the *Daily Mirror*, trying not to catch his eye. You don't know whether he's longing to nut you in the face or whether he just gets a kick out of terrifying you into thinking he wants to. But, either way, you just want to get out of the room in one piece. Kooks with nukes is one-way deterrence squared.

If Belgium becomes a nuclear power, the Dutch have no reason to believe it would be a factor in, say, negotiations over a joint highway project. But Iran's nukes will be a factor in everything. If you think, for example, the European Union and others have been fairly craven over those Danish cartoons, imagine what they'd be like if a nuclear Tehran had demanded a formal apology, a suitable punishment for the newspaper, and blasphemy laws specifically outlawing representations of the Prophet. Iran with nukes will be a suicide bomber with a radioactive waist.

If we'd understood Iran back in 1979, we'd understand better the challenges we face today. Come to that, we might not even be facing them. But, with hindsight, what strikes you about the birth of the Islamic Republic is the near total lack of interest by analysts in that adjective: Islamic. Iran was only the second Islamist state, after Saudi Arabia—and, in selecting as their own qualifying adjective the family name, the House of Saud at least indicated a conventional sense of priorities, as the legions of Saudi princes whoring and gambling in the fleshpots of the West have demonstrated exhaustively. Hypocrisy is the tribute vice pays to virtue—though, as the Royal Family has belatedly discovered vis-à-vis the Islamists, they're somewhat overdrawn on that front. The

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President Carter should have acted when Iranian "students" (including current president Mahmoud Ahmadinejad, who may be pictured above) seized U.S. hostages in 1979.

difference in Iran is simple: with the mullahs, there are no London escort agencies on retainer to supply blondes only. When they say "Islamic Republic," they mean it. And refusing to take their words at face value has bedeviled Western strategists for three decades.

Twenty-seven years ago, because Islam didn't fit into the old cold war template, analysts mostly discounted it. We looked at the map like that Broadway marquee: West and East, the old double act. As with most of the down-page turf, Iran's significance lay in which half of the act she'd sign on with. To the Left, the shah was a high-profile example of an unsavory U.S. client propped up on traditional he-may-be-a-sonofabitch-but-he's-our-sonofabitch grounds: in those heady days SAVAK, his secret police, were a household name among Western progressives, and insofar as they took the stern-faced man in the turban seriously, they assured themselves he was a kind of novelty front for the urbane Paris émigré socialists who accompanied him back to Tehran. To the realpolitik Right, the issue was Soviet containment: the shah may be our sonofabitch, but he'd outlived his usefulness, and a weak Iran could prove too tempting an invitation to Moscow to fulfill the oldest of czarist dreams—a warm-water port, not to mention control of the Straits of Hormuz. Very few of us considered the strategic implications of an Islamist victory on its own terms—the notion that Iran was checking the neither-of-the-above box and that that box would prove a far greater threat to the Freeish World than Communism.

But that was always Iran's plan. In 1989, with the Warsaw Pact disintegrating before his eyes, poor beleaguered Mikhail Gorbachev received a helpful bit of advice from the cocky young upstart on the block: "I strongly urge that in breaking down the walls of Marxist fantasies you do not fall into the prison of the West and the Great Satan," Ayatollah Khomeini wrote to Moscow. "I openly announce that the Islamic Republic of Iran, as the greatest and most powerful base of the Islamic world, can easily help fill up the ideological vacuum of your system."

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Today many people in the West don't take that any more seriously than Gorbachev did. But it's pretty much come to pass. As Communism retreated, radical Islam seeped into Africa and south Asia and the Balkans. Crazy guys holed up in Philippine jungles and the tri-border region of Argentina, Brazil, and Paraguay who'd have been "Marxist fantasists" a generation or two back are now Islamists: it's the ideology *du jour*. At the point of expiry of the Soviet Union in 1991, the peoples of the central Asian republics were for the most part unaware that Iran had even had an "Islamic revolution"; 15 years on, following the proselytizing of thousands of mullahs dispatched to the region by a specially created Iranian government agency, the Stans' traditionally moderate and in many cases alcoholically lubricated form of Islam is yielding in all but the most remote areas to a fiercer form imported from the south. As the Pentagon has begun to notice, in Iraq Tehran has been quietly duplicating the strategy that delivered southern Lebanon into its control 20 years ago. The degeneration of Baby Assad's supposedly "secular" Baathist tyranny into full-blown client status and the replacement of Arafat's depraved "secular" kleptocrat terrorists by Hamas's even more depraved Islamist terrorists can also be seen as symptoms of Iranification.

So as a geopolitical analyst the ayatollah is not to be disdained. Our failure to understand Iran in the seventies foreshadowed our failure to understand the broader struggle today. As clashes of civilizations go, this one's between two extremes: on the one hand, a world that has everything it needs to wage decisive war—wealth, armies, industry, technology; on the other, a world that has nothing but pure ideology and plenty of believers. (Its sole resource, oil, would stay in the ground were it not for foreign technology, foreign manpower, and a Western fetishization of domestic environmental aesthetics.)

For this to be a mortal struggle, as the cold war was, the question is: Are they a credible enemy to us?

For a projection of the likely outcome, the question is: Are we a credible enemy to them?

Four years into the "war on terror," the Bush administration has begun promoting a new formulation: "the long war." Not a reassuring name. In a short war, put your money on tanks and bombs—our strengths. In a long war, the better bet is will and manpower—their strengths, and our great weakness. Even a loser can win when he's up against a defeatist. A big chunk of Western civilization, consciously or otherwise, has given the impression that it's dying to surrender to somebody, anybody. Reasonably enough, Islam figures: Hey, why not us? If you add to the advantages of will and manpower a nuclear capability, the odds shift dramatically.

What, after all, is the issue underpinning every little goofy incident in the news, from those Danish cartoons of Mohammed to recommendations for polygamy by official commissions in Canada to the banning of the English flag in English prisons because it's an insensitive "crusader" emblem to the introduction of gender-segregated swimming sessions in municipal pools in Puget Sound? In a word, sovereignty. There is no god but Allah, and thus there is no jurisdiction but Allah's. Ayatollah Khomeini saw himself not as the leader of a geographical polity but as a leader of a communal one: Islam. Once those urbane socialist émigrés were either dead or on the plane back to Paris, Iran's nominally "temporal" government took the same view, too: its role is not merely to run national highway departments and education ministries but to advance the cause of Islam worldwide.

If you dust off the 1933 Montevideo Convention on the Rights and Duties of States, Article One reads: "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." Iran fails to meet qualification (d), and has never accepted it. The signature act of the new regime was not the usual post-coup bloodletting and summary execution of the shah's mid-ranking officials but the seizure of the U.S. embassy in Tehran by "students" acting with Khomeini's blessing. Diplomatic missions are recognized as

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the sovereign territory of that state, and the violation thereof is an act of war. No one in Washington has to fret that Fidel Castro will bomb the U.S. Interests Section in Havana. Even in the event of an actual war, the diplomatic staff of both countries would be allowed to depart.

Yet Iran seized protected persons on U.S. soil and held them prisoner for over a year—ostensibly because Washington was planning to restore the shah. But the shah died and the hostages remained. And, when the deal was eventually done and the hostages were released, the sovereign territory of the United States remained in the hands of the gangster regime. Granted that during the Carter administration the Soviets were gobbling up real estate from Afghanistan to Grenada, it's significant that in this wretched era the only loss of actual U.S. territory was to the Islamists.

"At hinge moments of history, there are never good and bad options, only bad and much much worse."

Yet Iran paid no price. They got away with it. For the purposes of comparison, in 1980, when the U.S. hostages in Tehran were in their sixth month of captivity, Iranians opposed to the mullahs seized the Islamic Republic's embassy in London. After six days of negotiation, Her Majesty's Government sent SAS commandos into the building and restored it to the control of the regime. In refusing to do the same with the "students" occupying the U.S. embassy, the Islamic Republic was explicitly declaring that it was not as other states.

We expect multilateral human-rights Democrats to be unsatisfactory on assertive nationalism, but if they won't even stand up for international law, what's the point? Jimmy Carter should have demanded the same service as Tehran got from the British—the swift resolution of the situation by the host government—and, if none was forthcoming, Washington should have reversed the affront to international order quickly, decisively, and in a sufficiently punitive manner. At hinge moments of history, there are never good and bad options, only bad and much much worse. Our options today are significantly worse because we didn't take the bad one back then.

With the fatwa against Salman Rushdie, a British subject, Tehran extended its contempt for sovereignty to claiming jurisdiction over the nationals of foreign states, passing sentence on them, and conscripting citizens of other countries to carry it out. Iran's supreme leader instructed Muslims around the world to serve as executioners of the Islamic Republic—and they did, killing not Rushdie himself but his Japanese translator, and stabbing the Italian translator, and shooting the Italian publisher, and killing three dozen persons with no connection to the book when a mob burned down a hotel because of the presence of the novelist's Turkish translator.

Iran's de facto head of state offered a multimillion-dollar bounty for a whack job on an obscure English novelist. And, as with the embassy siege, he got away with it.

In the latest variation on Marx's dictum, history repeats itself: first, the unreadable London literary novel; then, the Danish funny pages. But in the 17 years between the Rushdie fatwa and the cartoon jihad, what was supposedly a freakish one-off collision between Islam and the modern world has become routine. We now think it perfectly normal for Muslims to demand the tenets of their religion be applied to society at large: the government of Sweden, for example, has been zealously closing down websites that republish those Danish cartoons. As Khomeini's successor, Ayatollah Khamenei, has said, "It is in our revolution's interest, and an essential principle, that when we speak of Islamic objectives, we address all the Muslims of the world." Or as a female Muslim demonstrator in Toronto put it: "We won't stop the protests until the world obeys Islamic law."

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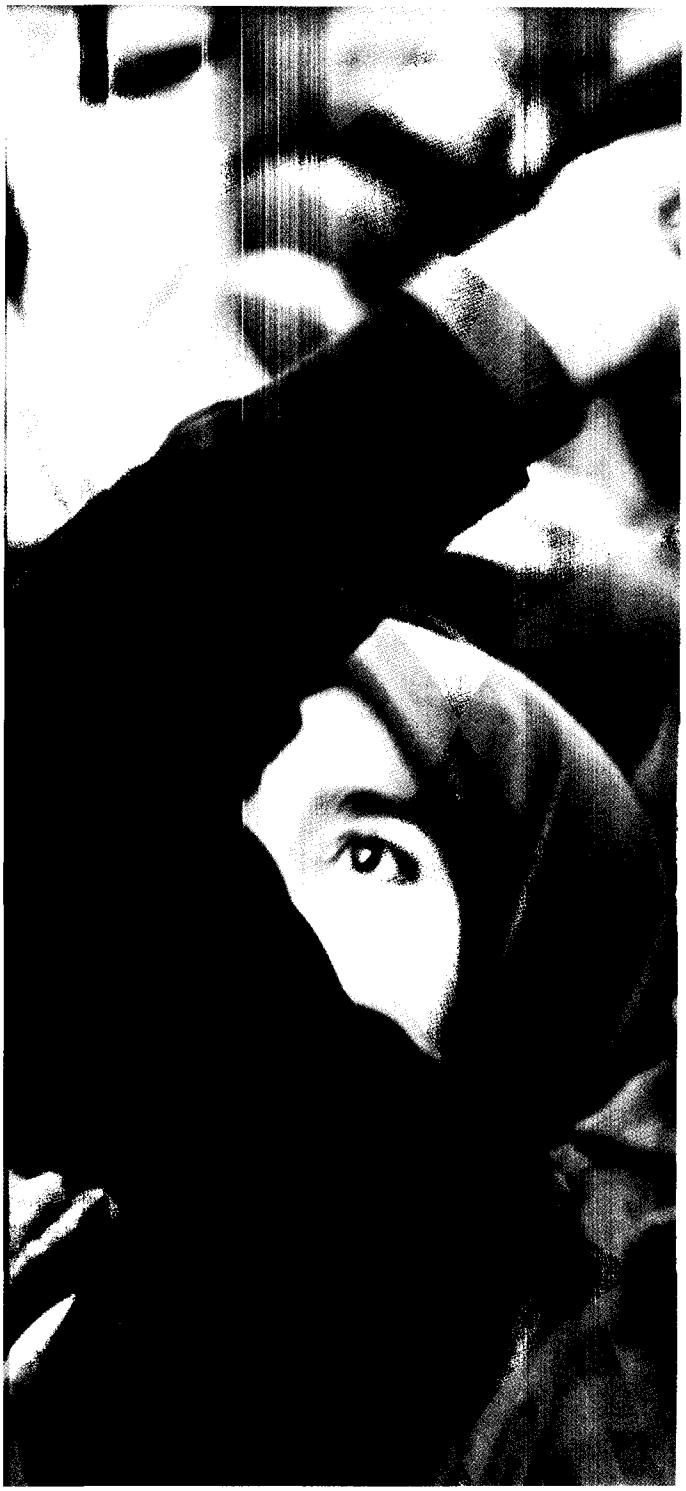

HERVE MERLIAC/AP WIDEWORLD PHOTOS

If that's a little too ferocious, Kofi Annan framed it rather more soothingly: "The offensive caricatures of the Prophet Muhammad were first published in a European country which has recently acquired a significant Muslim population, and is not yet sure how to adjust to it."

If you've also "recently acquired" a significant Muslim population and you're not sure how to "adjust" to it, well, here's the difference: back when my Belgian grandparents emigrated to Canada, the idea was that the immigrants assimilated to the host country. As Kofi and Co. see it, today the host country has to assimilate to the immigrants: if Islamic law forbids representations of the Prophet, then so must Danish law, and French law, and American law. Iran was the progenitor of this rapacious extraterritoriality, and, if we had understood it more clearly a generation ago, we might be in less danger of seeing large tracts of the developed world being subsumed by it today.

Yet instead the West somehow came to believe that, in a region of authoritarian monarchs and kleptocrat dictators, Iran was a comparative beacon of liberty. The British foreign secretary goes to Tehran and hangs with the mullahs and, even though he's not a practicing Muslim (yet), ostentatiously does that "peace be upon him" thing whenever he mentions the Prophet Mohammed. And where does the kissy-face with the A-list imams get him? Ayatollah Khamenei renewed the fatwa on Rushdie only last year. True, President Bush identified Iran as a member of the axis of evil, but a year later the country was being hailed as a "democracy" by then-deputy secretary of state Richard Armitage and a nation that has seen a "democratic flowering," as State Department spokesman Richard Boucher put it.

And let's not forget Bill Clinton's extraordinary remarks at Davos last year: "Iran today is, in a sense, the only country where progressive ideas enjoy a vast constituency. It is there that the ideas that I subscribe to are defended by a majority." That's true in the very narrow sense that there's a certain similarity between his legal strategy and sharia when it comes to adultery and setting up the gals as the fall guys. But it seems Clinton apparently had a more general commonality in mind: "In every single election, the guys I identify with got two-thirds to 70 percent of the vote. There is no other country in the world I can say that about, certainly not my own." America's first black President is beginning to sound like America's first Islamist ex-president.

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Iranian girls demonstrate against the Great Satan, America, in 1979.

Those remarks are as nutty as Gerald Ford's denial of Soviet influence in Eastern Europe. Iran has an impressive three-decade record of talking the talk and walking the walk—either directly or through client groups like Hezbollah. In 1994, the Argentine Israel Mutual Association was bombed in Buenos Aires. Nearly 100 people died and 250 were injured—the worst massacre of Jewish civilians since the Holocaust. An Argentine court eventually issued warrants for two Iranian diplomats plus Ali Fallahian, former intelligence minister, and Ali Akbar Parvaresh, former education minister and deputy speaker of the Majlis.

Why blow up a Jewish community center in Buenos Aires? Because it's there. Unlike the Iranian infiltration into Bosnia and Croatia, which helped radicalize not just the local populations

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but Muslim supporters from Britain and Western Europe, the random slaughter in the Argentine has no strategic value except as a demonstration of muscle and reach.

Anyone who spends half an hour looking at Iranian foreign policy over the last 27 years sees five things:

1) contempt for the most basic international conventions;
2) long-reach extraterritoriality;
3) effective promotion of radical Pan-Islamism;
4) a willingness to go the extra mile for Jew-killing (unlike, say, Osama);
5) an all-but-total synchronization between rhetoric and action.

Yet the Europeans remain in denial. Iran was supposedly the Middle Eastern state they could work with. And the chancellors and foreign ministers jetted in to court the mullahs so assiduously that they're reluctant to give up on the strategy just because a relatively peripheral figure like the, er, head of state is sounding off about Armageddon.

Instead, Western analysts tend to go all Kremlinological. There are, after all, many factions within Iran's ruling class. What the country's quick-on-the-nuke president says may not be the final word on the regime's position. Likewise, what the school of nuclear theologians in Qom says. Likewise, what former president Khatami says. Likewise, what Iran's supreme leader, Ayatollah Khamenei, says.

But, given that they're all in favor of the country having nukes, the point seems somewhat moot. The question then arises, what do they want them for?

By way of illustration, consider the country's last presidential election. The final round offered a choice between Mahmoud Ahmadinejad, an alumnus of the U.S. Embassy siege a quarter-century ago, and Hashemi Rafsanjani, head of the Expediency Council, which sounds like an EU foreign policy agency but is, in fact, the body that arbitrates between Iran's political and religious leaderships. Ahmadinejad is a notorious shoot-from-the-lip apocalyptic hothead who believes in the return of the Twelfth (hidden) Imam and quite possibly that he personally is his designated deputy, and he's also claimed that when he addressed the United Nations General Assembly last year a mystical halo appeared and bathed him in its aura. Ayatollah Rafsanjani, on the other hand, is one of those famous "moderates."

What's the difference between a hothead and a moderate? Well, the extremist Ahmadinejad has called for Israel to be "wiped off the map," while the moderate Rafsanjani has declared that Israel is "the most hideous occurrence in history," which the Muslim world "will vomit out from its midst" in one blast, because "a single atomic bomb has the power to completely destroy Israel, while an Israeli counter-strike can only cause partial damage to the Islamic world." Evidently wiping Israel off the map seems to be one of those rare points of bipartisan consensus in Tehran, the Iranian equivalent of a prescription drug plan for seniors: we're just arguing over the details.

So the question is: Will they do it?

And the minute you have to ask, you know the answer. If, say, Norway or Ireland acquired nuclear weapons, we might regret the "proliferation," but we wouldn't have to contemplate mushroom clouds over neighboring states. In that sense, the civilized world has already lost: to enter into negotiations with a jurisdiction headed by a Holocaust-denying millenarian nut job is, in itself, an act of profound weakness—the first concession, regardless of what weaselly settlement might eventually emerge.

Conversely, a key reason to stop Iran is to demonstrate that we can still muster the will to do so. Instead, the striking characteristic of the long diplomatic dance that brought us to this moment is how September 10th it's all been. The free world's delegated negotiators (the European Union) and transnational institutions (the IAEA) have continually given the impression that they'd be content just to boot it down the road to next year or the year after or find some arrangement—this decade's Oil-for-Food or North

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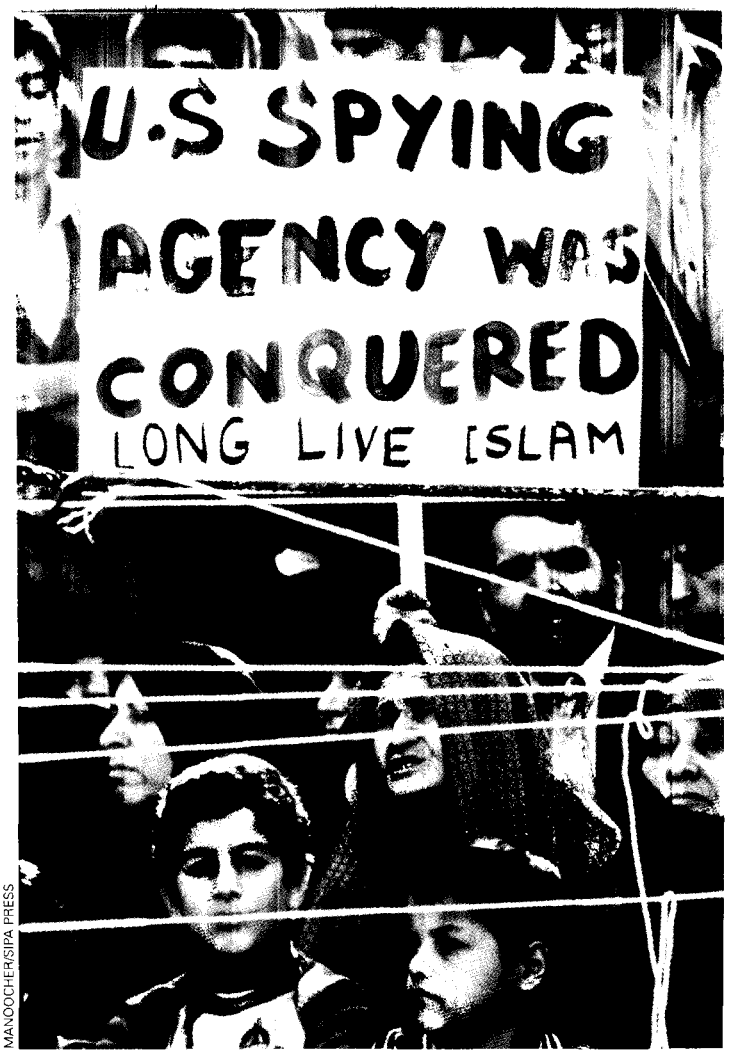
Korean deal—that would get them off the hook. If you talk to EU foreign ministers, they've already psychologically accepted a nuclear Iran. Indeed, the chief characteristic of the West's reaction to Iran's nuclearization has been an enervated fatalism.

Back when nuclear weapons were an elite club of five relatively sane world powers, your average Western progressive was convinced the planet was about to go ka-boom any minute. The mushroom cloud was one of the most familiar images in the culture, a recurring feature of novels and album covers and movie posters. There were bestselling dystopian picture books for children, in which the handful of survivors spent their last days walking in a nuclear winter wonderland. Now a state openly committed to the annihilation of a neighboring nation has nukes, and we shrug: Can't be helped. Just the way things are. One hears sophisticated arguments that perhaps the best thing is to let everyone get 'em, and then no one will use them. And if Iran's head of state happens to threaten to wipe Israel off the map, we should understand that this is a rhetorical stylistic device that's part of the Persian oral narrative tradition, and it would be a grossly Eurocentric misinterpretation to take it literally.

The fatalists have a point. We may well be headed for a world in which anybody with a few thousand bucks and the right unlisted Asian phone numbers in his Rolodex can get a nuke. But, even so, there are compelling reasons for preventing Iran in particular from going nuclear. Back in his student days at the U.S. embassy, young Mr. Ahmadinejad seized American sovereign territory, and the Americans did nothing. And I would wager that's still how he looks at the world. And, like Rafsanjani, he would regard, say, Muslim deaths in an obliterated Jerusalem as worthy collateral damage in promoting the greater good of a Jew-free Middle East. The Palestinians and their "right of return" have never been more than a weapon of convenience with which to chastise the West. To assume Tehran would never nuke Israel because a shift in wind direction would contaminate Ramallah is to be as ignorant of history as most Palestinians are: from Yasser Arafat's uncle, the pro-Nazi Grand Mufti of Jerusalem during the British Mandate, to the insurgents in Iraq today, Islamists have never been shy about slaughtering Muslims in pursuit of their strategic goals.



MANOOCHER/SIPA PRESS

America's failure to respond to the hostage crisis emboldened Iran.

But it doesn't have to come to that. Go back to that Argentine bombing. It was, in fact, the second major Iranian-sponsored attack in Buenos Aires. The year before, 1993, a Hezbollah suicide bomber killed 29 people and injured hundreds more in an attack on the Israeli Embassy. In the case of the community center bombing, the killer had flown from Lebanon a few days earlier and entered Latin America through the porous tri-border region of Argentina, Brazil, and Paraguay. Suppose Iran had had a "dirty nuke" shipped to Hezbollah, or even the full-blown thing: Would it have been any less easy to get it into the country? And, if a significant chunk of downtown Buenos Aires were rendered uninhabitable, what would the Argentine government do? Iran can project itself to South America effortlessly, but Argentina can't

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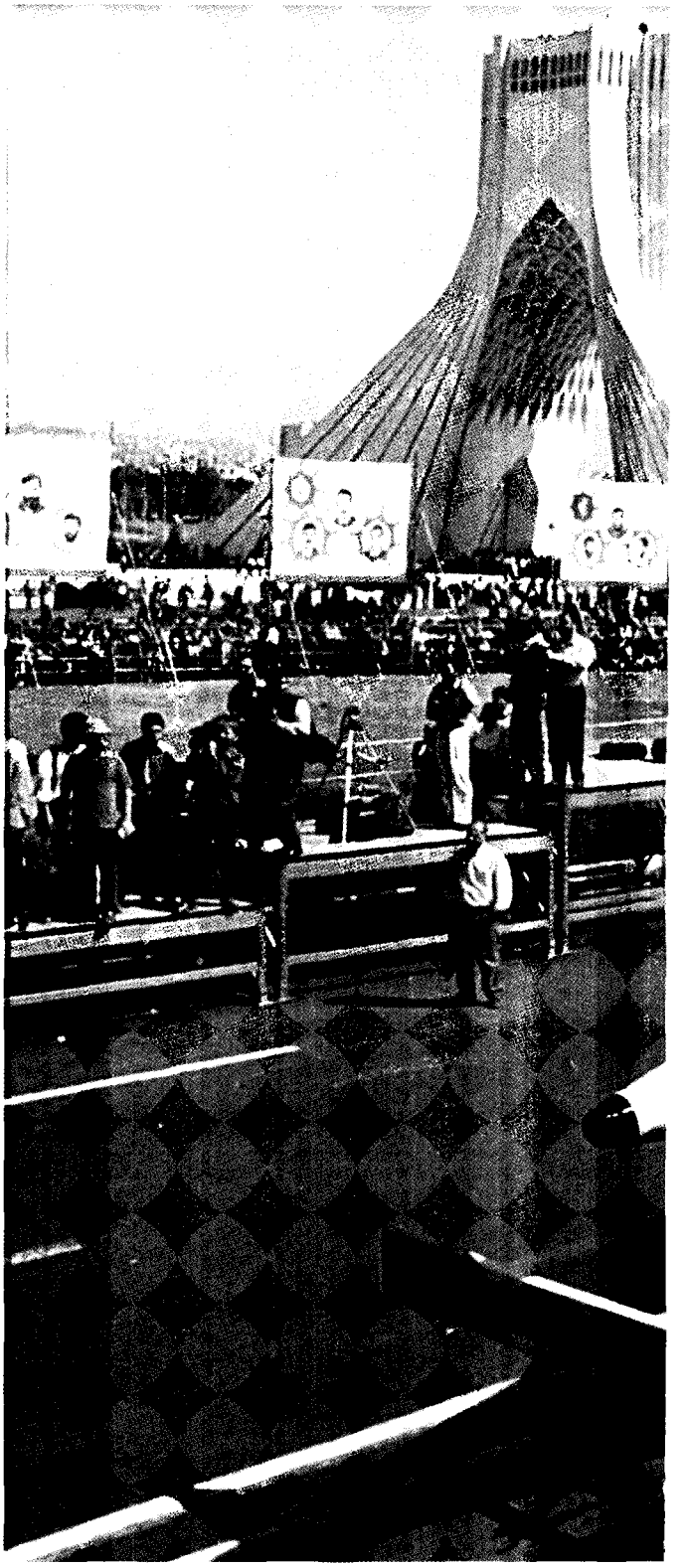
project itself to the Middle East at all. It can't nuke Tehran, and it can't attack Iran in conventional ways.

So any retaliation would be down to others. Would Washington act? It depends how clear the fingerprints were. If the links back to the mullahs were just a teensy-weensy bit tenuous and murky, how eager would the U.S. be to reciprocate? Bush and Rumsfeld might—but an administration of a more Clinto-Powellite bent? How much pressure would there be for investigations under UN auspices? Perhaps Hans Blix could come out of retirement, and we could have a six-month dance through Security-Council coalition-building, with the secretary of state making a last-minute flight to Khartoum to try to persuade Sudan to switch its vote.

Perhaps it's unduly pessimistic to write the civilized world automatically into what Osama bin Laden called the "weak horse" role (Islam being the "strong horse"). But, if you were an Iranian "moderate" and you'd watched the West's reaction to the embassy seizure and the Rushdie murders and Hezbollah terrorism, wouldn't you be thinking along those lines? I don't suppose Buenos Aires Jews expect to have their institutions nuked any more than 12 years ago they expected to be blown up in their own city by Iranian-backed suicide bombers. Nukes have gone freelance, and there's nothing much we can do about that, and sooner or later we'll see the consequences—in Vancouver or Rotterdam, Glasgow or Atlanta. But, that being so, we owe it to ourselves to take the minimal precautionary step of ending the one regime whose political establishment is explicitly pledged to the nuclear annihilation of neighboring states.



ATTA KENARE/AFP/GETTY IMAGES

Once again, we face a choice between bad and worse options. There can be no "surgical" strike in any meaningful sense: Iran's clients on the ground will retaliate in Iraq, Lebanon, Israel, and Europe. Nor should we put much stock in the country's allegedly "pro-American" youth. This shouldn't be a touchy-feely nation-building exercise: rehabilitation may be a bonus, but the primary objective should be punishment—and incarceration. It's up to the Iranian people how nutty a government they want to live with, but extraterritorial nuttiness has to be shown not to pay. That means swift, massive, devastating force that decapitates the regime—but no occupation.

The cost of de-nuking Iran will be high now

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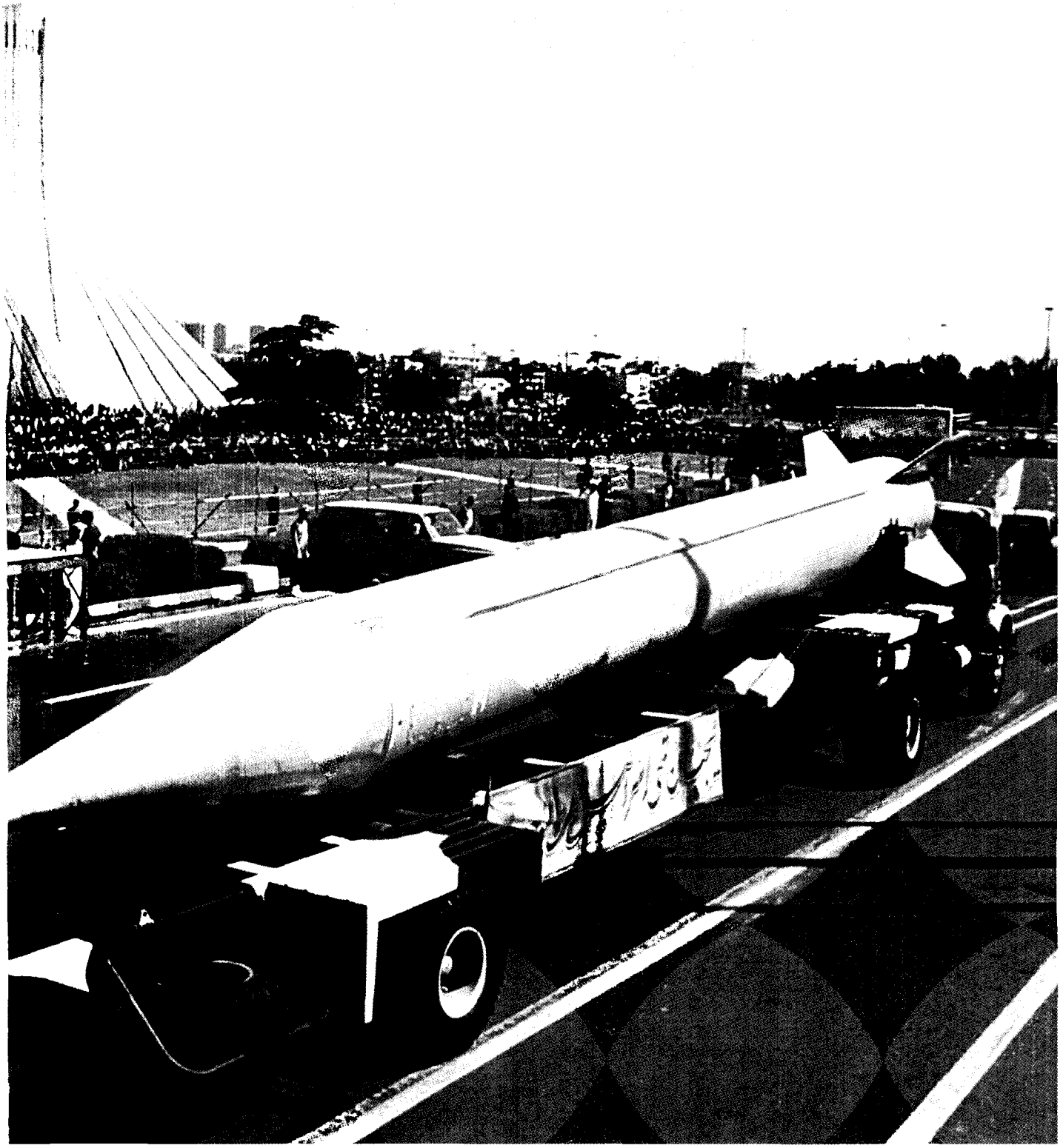

The powerful Shahab-3 missile, which can reach Israel and beyond, could make it costly to bomb Iran.

but significantly higher with every year it's postponed. The lesson of the Danish cartoons is the clearest reminder that what is at stake here is the credibility of our civilization. Whether or not we end the nuclearization of the Islamic Republic will be an act that defines our time.

A quarter-century ago, there was a minor British pop hit called "Ayatollah, Don't Khomeini Closer." If you're a U.S. diplomat or a British novelist, a Croat Christian or an Argentine Jew, he's already come way too close. How much closer do you want him to get?

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Houston's Noble Experiment

Can good government uplift the New Orleans evacuees whom bad government harmed?

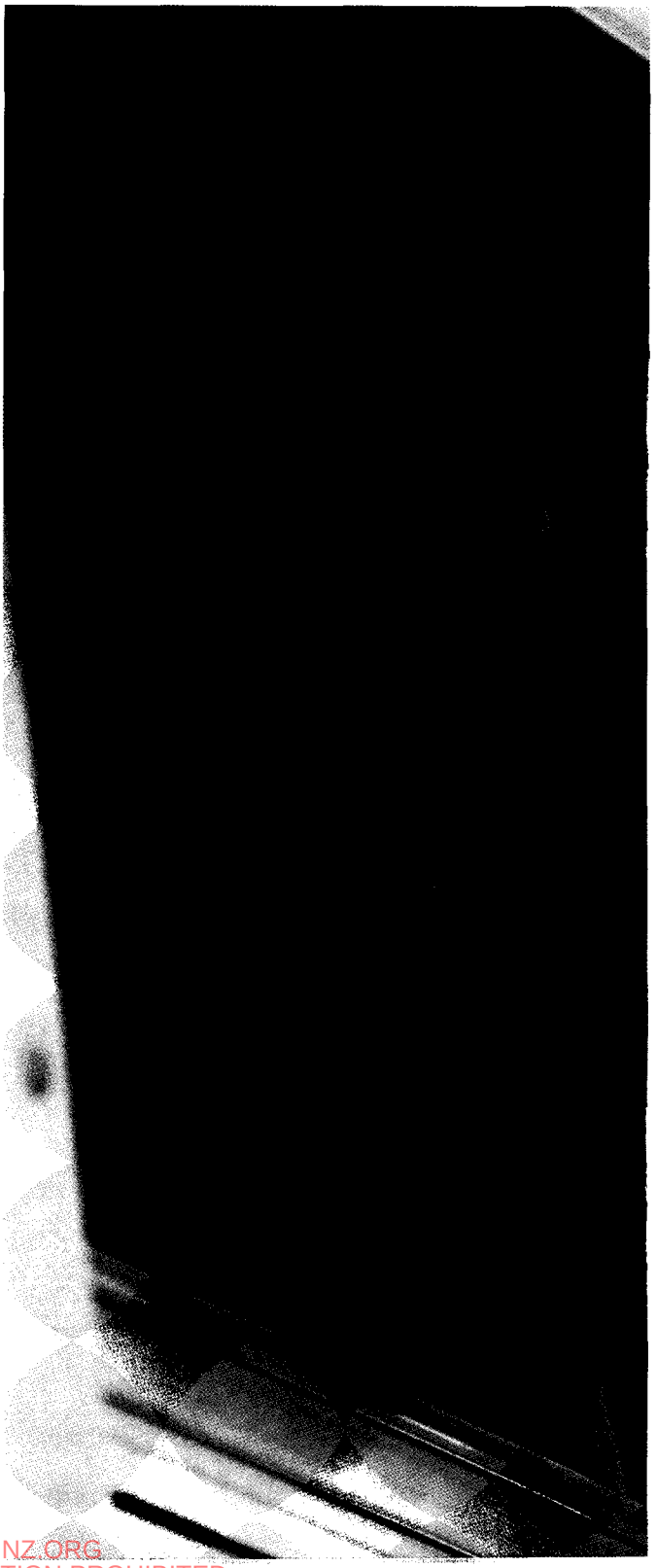
Nicole Gelinas

From the tragedy of Hurricane Katrina emerges a historic natural experiment: Can one city's good governance help undo what another city's bad governance helped create?

In the decades before Katrina, New Orleans was a place where failed urban policies let social pathology fester. Its economy was listless, its population declining. Free-market employers and middle-class residents shunned the city, because its public sector was seen as corrupt, its citizenry was uneducated, and its neighborhoods were crime-ridden. Failed criminal-justice and public-education systems helped perpetuate a large underclass, mostly black, as the city's productive class, white and black, dwindled. Decades of government mismanagement and private-sector abandonment had turned New Orleans's once-whimsical local nickname—"The City That Care Forgot"—into a sad epitaph before Katrina.

To escape Katrina, about half of New Orleans's population, or about 240,000 people, fled 350 miles west on Interstate 10 to Houston, whose increasing population and expanding economy have been the inverse of New Orleans's over the past five decades. More than seven months after the storm, Houston remains home to about 150,000 New Orleans evacuees.

Houston isn't just showing its guests some Texas hospitality; it's showing displaced New Orleanians what a difference it makes to live in a city that strives, if imperfectly, to operate upon sound urban-governance precepts—leadership in



STAN HONDA/AFP/GETTY IMAGES

New Orleans evacuees start their first day at their new Houston school.

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a crisis, competent policing, a functioning judicial system, accountable urban schools, and a culture of private-sector entrepreneurship.

Since multiple surveys of Katrina evacuees in Houston indicate that between half and two-thirds plan to stay, the challenge for post-Katrina Houston is to ensure that the worst elements of New Orleans's crime-ravaged underclass don't perpetuate their dysfunctional habits in Houston. Houston's success would show the rest of the nation how much good government matters, even—or especially—to the toughest population.

Houston wouldn't be the setting for this unprecedented experiment if it hadn't risen to the occasion as no other government—federal, state, or local—did after Katrina. How did it mobilize so quickly? A social-services expert might think that, being such a small-government town, it would have been overwhelmed by the influx: recently branded one of America's "meanest cities" by a homeless-advocacy group, Houston spent less than $1,500 per person in city funds last year, compared with New York's $5,000. It has one public-sector worker to serve every 130 citizens, compared with one for every 22 in New York. About 6 percent of New Yorkers live in public housing; less than 1 percent of Houstonians do. Houston has no income tax, and nearly everyone you meet there boasts that the city is a "business city" with "business interests."

But that's no measure of Houston's generosity. All it proves is that Houston never entwined its budget with radical entitlement politics in the sixties and seventies. Yet when Houston saw a crisis of humanity, it acted.

The tales of the city's generosity, individual as well as civic, are breathtaking. To tell just one: after Katrina destroyed her New Orleans home, Pauline Horton, along with her son, mother, stepfather, and sister, was "desperately searching for answers, resources, and directions" in a Houston shelter when she heard a "loud authoritative voice coming from a tall white man in his mid-fifties," she recounts. The voice belonged to Daniel Shea, a lawyer who had come in search of an elderly couple to share his modest home for a few days.

The Horton clan didn't fit the description. But, Horton relates, Shea was "very persistent about helping the Katrina evacuees." He decamped from his own house into a friend's for nearly two weeks so that Horton and her family could move in. Shea "moved very swiftly to provide for our basic needs. . . . He took me to enroll my son in a nearby school and bought his uniforms. Anything we [didn't] think of to assist in rebuilding our lives, he did." When Horton's brother turned up in Arkansas after a close escape from New Orleans's Lower Ninth Ward, Shea, "waiting for his next assignment," flew him to reunite with the rest of the family.

Houston solved the first long-term crisis Katrina caused—what to do with thousands of desperate citizens washed out of their homes—because elected local and county officials carried out Shea's style of determined competence on a mass scale with military precision. The city augmented its own resources with volunteers from churches, temples, corporations, and charities to take in what amounted to a new population equal to 10 percent of its own citizenry over seven days, and to place two-thirds of these evacuees into housing within weeks.

Two nights after the August 29 storm, as New Orleans's Superdome and convention center were boiling over with desperation, Judge Robert Eckels (the elected executive for the nearly 4-million-strong Harris County, which includes the 2 million residents of Houston) got a phone call from Governor Rick Perry's emergency-management team in the middle of the night. Texas, the governor's team told him, had volunteered to take in thousands of evacuees from New Orleans. "They said they would need 2,000 beds" right away, Eckels recalls. Eckels in turn called up the private-sector stadium operators and worked with them to get the sites ready. He was unfazed when the governor's office called back to say that they would need 23,000 beds instead: "It was still manageable," Eckels notes, adding that disaster management isn't a matter of sticking to a

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plan; it's figuring out what to do when the plan won't work.

New Orleans had decades to prepare large-scale shelters to house, feed, and police its citizens during and after a catastrophic hurricane. Houston had two days. But the evacuees who filed into its stadiums and a city-run convention center found orderly rows of cots, as well as ample supplies and security, in marked contrast to the chaotic, ill-supplied, and unpoliced New Orleans Superdome and convention center from which many of them had come. And as Houston and Harris County officials watched New Orleans descend further into chaos over the week before Labor Day, they decided that they had to do something more: they sent their school-bus fleet to New Orleans over the long weekend to pick up even more desperate citizens.

The evacuees "were in horrible shape," Eckels remembers. City paramedics and hundreds of volunteer doctors and nurses treated those who had been without medication for chronic illnesses ranging from diabetes to schizophrenia. Local pharmacies set up shop in the stadiums to dispense 11,000 prescriptions. Police kept order. Workers in downtown Houston still boast of the lines of cars that snaked around the stadium complex when commuters stopped to drop off supplies. They also boast of how efficiently Houston officials told faith-based and other charity groups exactly what each team of volunteers could do to help, from cooking 1,000 meals to sheltering 20 families, while at the same time they coordinated the thousands of volunteers, some from as far away as Colorado and Idaho, who just showed up at the stadiums on their own.

But Judge Eckels and Mayor Bill White quickly determined that the challenge went beyond providing a few nights' sleep and security. By the first week's end, Houston's stadiums were housing nearly 30,000 evacuees. "My goal was that it not become a refugee camp," Eckels recalls. Tens of thousands more were staying in charity, church, and temple shelters and in private homes. "Katrina wasn't here, but the disaster here was housing," recalls county Housing Authority chief Guy Rankin, whose job it was to figure out where thousands of evacuees would live. One day in early September, Rankin arrived at work to find a line of 600 evacuees snaked around his office building; all needed a place to live.

"For the thousands who did stay in FEMA-paid hotels and trailers after Katrina, hotel living encouraged inertia."

The federal government's answer for evacuees whose homes and jobs had washed away was the one it gives to those displaced briefly by a run-of-the-mill hurricane: motels and "FEMA-villes" of mobile homes in isolated rural spots. But Houston knew that such temporary housing was no answer for the hundreds of thousands who needed to restart productive lives as soon as possible. The last thing America needed was massive Palestinian-style refugee camps on our own soil, filled with people who would refuse to get on with their lives, until, as former New Orleans mayor Marc Morial and the Acorn urban-activist group have already insisted, they are awarded a "right of return."

For the thousands who did stay in FEMA-paid hotels and trailers after Katrina, at a cost of over a billion dollars, hotel living encouraged dependency and inertia, particularly for those who had been dependent and inert in the first place. Many evacuees in hotels delayed looking for real housing and employment for months, focusing instead on pushing back each new FEMA eviction date (and, at one New York hotel, enlisting the Reverend Al Sharpton to help them achieve "social justice").

Fortunately, Houston had a better idea. In little more than a week, the city and county

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designed a mass-scale housing program to give displaced citizens an alternative to sitting in hotel rooms, with nothing expected of them but waiting. This housing program, coupled with the massive job fair Houston held for evacuees, helped its new citizens understand that, despite the traumatic storm and sudden relocation, "there was still a high degree of personal responsibility" expected of working-age adults, Eckels said.

Houston and the county offered any adult from hurricane-ravaged areas a 12-month voucher to rent an apartment at the median local market price—about $700 a month for a two-bedroom—to be paid to participating landlords by the city. In doing this, Houston quickly mastered the tactical rule of disasters: to get the federal government to do something, do it yourself, and then make the feds pay for it. When FEMA later periodically balked at paying the cost of the housing program Houston had devised—as much as $30 million a month, but much cheaper than hotels—and then tried to tinker with the program so that it conformed to its bureaucratically inflexible rules, Houston alternatively ignored the feds and reasoned with them until they gave in. The result was a better use of the federal dollars that would be spent on evacuees anyway.

To direct ground operations for the thousands of families who showed up for their free apartments, Houston hired freshly retired army major Buddy Grantham, who had handled supply logistics for the invasions of Afghanistan and Iraq and had come to the Astrodome to volunteer for a few days because he had figured he could use the same skills to sort out people. Harris County also got help from executives of the Houston-based utility CenterPoint Energy, who helped coordinate everything from deliveries of donated furniture to meals to be delivered by the people from churches and charities who showed up to cook them.

Houston stopped awarding vouchers in December, when Katrina evacuees—eager for apartments, not hotel rooms—were still arriving from other cities. Mayor White wasn't exaggerating when he said then that "Houston is getting full." Houston had given out 46,000 vouchers, housing well over 100,000 people, the majority (over 30,000 families) from Orleans Parish, for a year. The influx pushed Houston's apartment vacancy rate down from about 14 percent in midsummer to the mid–single digits by the end of the year. Thanks to the vouchers, the evacuees "have a year to get their life together," Judge Eckels told me.

That was when Houston's role turned from one requiring excellence in disaster management to one requiring excellence in something less glamorous: workaday urban governance.

As many American cities have proved, competent local governance doesn't come naturally, particularly when social services are involved. And, indeed, Houston, whose police department and largest school district have each faced high-profile scandals in recent years, faces a learning curve here, after its stellar performance during the acute crisis.

It would have been easy for Mayor White and Judge Eckels to botch the governing of Katrina evacuees from day one. It would have been easy to treat the evacuees as a marked population needing all manner of permanent government services due to their status as mostly black disaster victims from poverty-ridden New Orleans. Many politicians would have taken advantage of Americans' vivid memory of the thousands stranded at the Superdome to call for government-provided "justice" à la Sharpton.

After all, the population that arrived in Houston, particularly those who took vouchers, is disproportionately poor. Houston's United Way surveyed thousands of evacuees in the shelters and found that their household income averaged about $19,000, well below the national average and just half of Houston's median household income of about $37,000.

New Orleans's poor population includes a sizable underclass. Before Katrina struck, fully 10 percent of New Orleanians lived either in public housing or Section 8 housing, far above the rates in Houston or New York. Only 36 percent of New Orleans's adults were married, compared with more than 49 percent in Houston, and more than half of mothers were

CARLOS BARRIA/REUTERS/CORBIS

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Compared with the chaos of New Orleans's Superdome, evacuee accommodation in Houston's Astrodome was orderly and safe.

unmarried, compared with 28 percent in Houston. In some New Orleans neighborhoods, only a quarter of the children lived with married parents. More than two-thirds of female-headed black households lived in poverty. Though many of New Orleans's underclass had moved from idleness into low-wage, tourist-trade jobs over the past decade, thanks to federal welfare reform and an abundance of such work in the city, their family structures and social skills hadn't improved along with this fledgling work ethic. The concentration of weak families partly explains why the city endured some of the nation's highest violent-crime rates.

Because Houston took in so many evacuees directly from New Orleans's Superdome and convention center, its population of New Orleanians is more heavily underclass than New Orleans itself. As Judge Eckels told me: "Those who left last had the least." Those who crowded into the Superdome and convention center were those who didn't heed the mandatory evacuation. They included, in addition to indigent elderly, New Orleans's poorest single mothers, as well as (almost certainly) many of the young men who had looted New Orleans in the critical hours after Katrina, before the catastrophic flooding of their own homes in low-lying neighborhoods

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forced them to the Superdome and convention center and then to Houston.

But neither Judge Eckels nor Mayor White used the evacuees as an occasion to make speeches calling for Great Society–style social programs. In fact, as Houston absorbed its new population in late 2005, it began to grasp that what ailed New Orleans's poor before the storm was not so much poverty as violent crime. It followed that the best social program for them would be good policing, to protect citizens new and old.

When I asked Mayor White in February how Houston would ensure that the evacuees didn't re-create New Orleans's infamous crime- and poverty-ridden enclaves, he didn't invoke "root causes"; the answer, he said, was to remove New Orleans's violent criminals—a "tiny minority" of evacuees, he took care to note—from the population.

But it had taken Houston precious months of experience with New Orleans's criminals to get to this point. When Houston first began to suffer a string of murders committed by and against the same young thugs responsible for New Orleans's pre-Katrina reign of violence, local officials seemed anxious to wish away the crime spike. As late as early January, officials were insisting that the surge wasn't due to the low boiling point of its new population, arguing instead that with any increase in population, crime is bound to go up.

In fact, as Houston has slowly acknowledged, Katrina evacuees pushed up Houston's rates for some crimes, particularly homicide, not just the raw number of offenses. Houston's post-Katrina crime surge is an extension of the pre-Katrina violence of New Orleans's criminal underclass. Before Katrina, New Orleans had the highest murder rate of any big U.S. city, almost four times Houston's, with 58 people killed per year for every 100,000 citizens. The murder numbers Houston has racked up since Katrina prove that violent New Orleanians haven't changed their ways, but only their scenery.

Since Katrina, Houston police have identified New Orleans evacuees as either suspects or victims (or often both) in more than 30 Houston-area homicides. Of an evacuee population of 175,000, this works out to a per-capita annual murder rate of about 34 per 100,000, well above Houston's pre-Katrina rate. News of violent murders committed by and against Katrina evacuees has created a bit of a backlash in Houston. In a recent Rice University poll of Houston-area residents, two-thirds of the participants blamed Katrina evacuees for the crime spike and for a "considerable strain" on community resources. Some bloggers grumble that the THANKS HOUSTON bumper stickers sported on cars in post-Katrina New Orleans have a snide double meaning: that is, thanks for taking our thugs. In any event, Houston's most acute post-Katrina task is to treat its post-Katrina crime problem as seriously as it treated its post-Katrina housing crisis.

Houston's housing-voucher program for Katrina evacuees, a workable solution to an acute crisis, nevertheless proves the law of unintended consequences in even justified government largesse. The vouchers encouraged the incursion of New Orleans's population of criminals into Houston's most vulnerable tracts: acre after acre of two-story apartment complexes that blot Houston's underpoliced southwest and west-side neighborhoods. Adorned with vacation-style names like Whispering Oaks and Happy Homes, these complexes were built by private investors more than two decades ago for the city's young petroleum elite. But when an oil boom busted a generation ago, the young middle class moved out, and landlords slashed their prices.

Now, though Houston has little public housing, these apartment complexes are the same idea. Long before Katrina, the complexes on the city's southwest and west side were rife with crime and drugs. Their isolated courtyards, designed for after-work barbecues and cocktail parties, serve just as well as venues for gang loitering and drug dealing.

By late September, these complexes were home to tens of thousands of New Orleans evacuees. They concentrated there partly because some landlords refused to accept housing vouchers,

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and partly because of a FEMA dictate that was later fixed after lobbying by Houston (but not before thousands of evacuees had found housing): voucher recipients weren't allowed to pay the difference between the voucher's value and a higher market rent, limiting their options. Moreover, some evacuees gravitated toward the apartment complexes simply because they aren't different from what New Orleans's underclass is used to: low-rise housing projects where young men gather in courtyards. As Michelle Bullock Brefect, a graduate of New Orleans's public housing whose older brother was shot to death in a project more than a decade ago, put it: gang members "go where they're comfortable."

Worsening an already explosive situation, the evacuees didn't group randomly; in some complexes, they roughly sketched out the same neighborhoods they had fled. Free to choose their own Houston apartments, New Orleanians got on their cell phones to find out where friends and family members were staying. Compounding matters, Houston and FEMA awarded housing vouchers to any adult from the hurricane-hit area, not just to those who'd been renters or homeowners there. As the housing authority's Buddy Grantham told me, young people who'd been living with their mothers in New Orleans suddenly got a once-in-a-lifetime chance.

"Police have identified New Orleans evacuees as either suspects or victims in more than 30 Houston-area homicides."

Katrina evacuees have largely crowded into four already crime-ridden patrol districts on Houston's west and southwest sides. In some apartment complexes, evacuees now make up 40 percent of the tenants. Pre-Katrina, these districts had suffered persistent homicide increases over the past two years, but a few statistics show how the influx of evacuees made matters worse.

In these districts, homicides were up 52 percent for the last months of 2005 over the same months in 2004, and Katrina evacuees accounted for a vastly disproportionate share of the increase. After Katrina, armed robberies in the districts were up 11 percent, after an 11 percent drop during the same months between 2003 and 2004. Assaults, flat the previous year, were up nearly 12 percent after Katrina. Weapons arrests, also flat the previous year, rose 31 percent. In crime reports, police now are directed to identify suspects by their hairstyle and accents, as those from Louisiana often wear distinctive dreadlocks and speak in a unique dialect.

Numbers are one thing, but fear is another. By late autumn, New Orleans's underclass wars had come to Houston. The Big Easy's style of crime isn't what Houston is used to. Houston gangs—which include international drug traffickers—are violent, to be sure, but their violence makes a rough kind of sense, having to do with money, position in the gang hierarchy, and the ruthless protection of turf and of affiliates. Though New Orleans's gangs, like Houston's, traffic in guns and drugs, their main concern seems to be violence for the sake of violence. "Murders are just the way this group of individuals resolves conflicts," notes James Bernazzani, the FBI's special agent for New Orleans, who has studied New Orleans's gang culture carefully. "They graduate from theft to robberies to homicide" as they move through adolescence, he reports. One Houston police officer who has done prison details since Katrina mused to me that "hardened Houston criminals" have complained to him of how gratuitously violent the prisoners from New Orleans are. "That's an insult," Houston prisoners snarl when someone asks them if they are from New Orleans.

While Houston has seen some fighting between Houstonians and New Orleans evacuees over turf, much of the evacuee bloodshed results from the intact relocation of New Orleans's relentless gang violence to Houston. "The crimes we're seeing are homicides, robberies,

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Hilda Crain, slightly overwhelmed, is one of over 100,000 evacuees whom Houston has housed in apartments like this.

and assaults of people who knew each other and had problems before," said Houston police lieutenant Humberto Lopez. This is "legacy fighting," says Bernazzani.

One of the many dismally similar murders that have plagued Houston since Katrina shows how well New Orleans gangs regrouped. Steven Kennedy survived the floodwaters, only to be shot to death by a fellow evacuee in a Houston apartment complex in December. Houston and New Orleans police believe that the killing was just another in a string of homicides committed by members of the rival Dooney Boyz and 3NG gangs, each affiliated with a Big Easy

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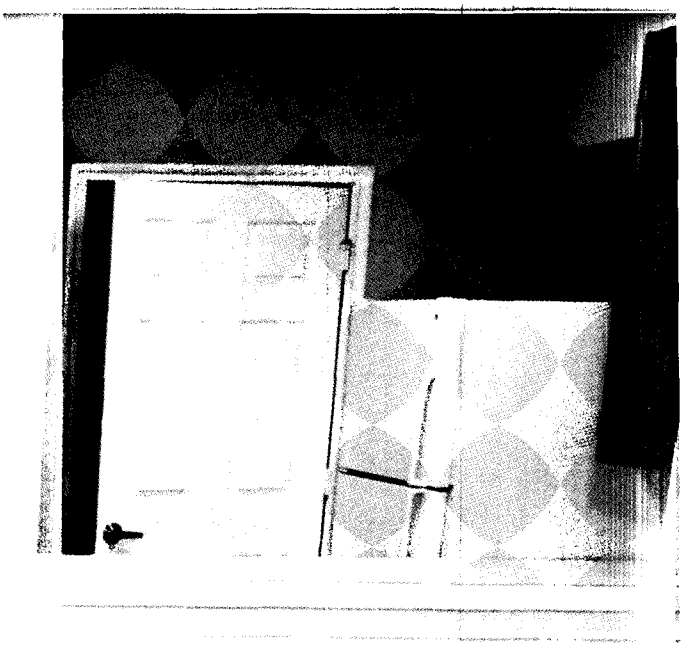

DAVE EINSEL/GETTY IMAGES

housing project. The killing likely resulted from Kennedy's own murder in 2003 of an aspiring rapper associated with the 3NG Boys, while that murder in turn was probably retribution for the 2001 murder of a heroin trafficker who is the Dooney Boyz's namesake.

The FBI's Bernazzani cites one statistic that shows what Houston could expect if it does not quickly get a handle on the new crime: in one year, 94 killings took place in and around one gang-ridden New Orleans housing project before officials finally gave up and tore the place down.

Unchecked, New Orleans violence could make some marginal Houston neighborhoods horrific places. Since Katrina, Mandy Kao, who owns five Houston apartment complexes, has counted five evacuee homicides near her properties; in January, a gunman threatened her employees. She has hired guards to patrol her complexes. When I asked Kao if they were armed, she sounded surprised: "They have to be armed," she replied, "or they would be killed."

Confronting New Orleans's legacy, the Houston Police Department has shown over the past few months that competent policing can make a big difference in the lives of criminals and victims alike. Some of the HPD's early post-Katrina work was easy. As officer Orlando Patterson told me as we rode around southwest Houston, New Orleans evacuees don't even seem to know that possessing or smoking marijuana, or carrying unlicensed weapons, is a crime. "They say, 'Y'all ain't like N'Awlins' when we arrest them," Patterson observed.

Houston has gone beyond the easy work with a gang-intelligence project. Late last year, the HPD tapped Lieutenant Lopez, a 21-year vet, to head its new gang-murder squad. As he set to work trying to link a spate of murders, he recounts, "We noticed [some evacuees] were giving us a lot of problems. We saw the suspects, victims, witnesses linked to New Orleans. . . . We said, okay, we have a problem. Since we found this, we decided to learn as much as possible about the Louisiana people."

Lopez's task force is benefiting from information that the FBI's Bernazzani compiled during the first few months of his now year-old tour in New Orleans, when he worked with the NOPD to compile a database of the Big Easy's gang members and their crimes. New Orleans cops and FBI agents traveled to Houston to share the information they had gathered under Bernazzani's initiative, including a list

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of more than 800 known gang members from New Orleans as well as information on the gangs' long-running disputes, neighborhood affiliations, and favored crimes. Houston is using the information to implement a new anti-gang strategy, involving narcotics and robbery squads in tracking gang members, and working with prosecutors to ensure that individuals arrested for drugs or robbery, who already have been tagged as violent gang members, are prosecuted aggressively on those charges rather than released to the streets. Houston has also worked doggedly to make public the identities of suspects from New Orleans who have committed the most egregious crimes, including homicide, in Houston; one list of 11 wanted violent suspects netted eight high-profile evacuee arrests in just weeks.

All this good police work actually has an effect in Houston, because, in contrast to New Orleans, it has a functioning prosecutor's office, complemented by judges who actually sentence criminals to prison. Says Lieutenant Lopez of New Orleans suspects: "They're not used to being policed. . . . A lot of them are surprised—and after a few weeks are surprised that they're still in jail. They're not really aware of how Texas works." Concurs Bernazzani: "The HPD does not experience the frustration that the NOPD experiences. . . . There is a sense that the revolving door is closing as individual cases are resolved" in Houston.

How much more effective is Houston's criminal-justice system than New Orleans's? In New Orleans, according to its nonprofit Metropolitan Crime Commission, 7 percent of those arrested for a crime ultimately served prison time, compared with 58 percent in Houston. In New Orleans, only 12 percent of those arrested for homicide are ultimately incarcerated for that crime; in Houston, it's 47 percent. In New Orleans, 18 percent of robbery and 12 percent of drug-distribution arrestees ultimately serve prison time; Houston's numbers are 60 and 71 percent. Compared with national averages, Houston's results aren't stellar, but the city's obvious superiority to New Orleans demonstrates how poor policing, poor prosecution, and poor sentencing nurtured the Big Easy's criminal underclass.

Building on these successes, the HPD now should do a full-scale rollout of data-driven policing down to the patrol level, as pioneered by the New York Police Department in the 1990s. Such policing would make a huge difference in Houston, because the city will never have the manpower it needs to patrol its city adequately. Houston's central policing problem is not much different from sprawling Los Angeles's. As Heather Mac Donald reported in the Autumn 2003 *City Journal*: "The core challenge of L.A. policing [is] to cover a huge area with a woefully small force. Angelenos have always balked at funding a police department big enough for its responsibilities, perhaps because most of the tax revenue comes from neighborhoods with little crime."

Houston's police force, smaller than Los Angeles's, must cover an even larger populated area. While Houston and L.A. have about the same number of cops per capita—about one per 410 residents—L.A. has about 19 cops per square mile, while Houston has fewer than nine per square mile. (New York has about one cop per 235 residents, and more than 100 per square mile.) Because of Houston's low density, patrol districts are huge; a Houston cop can spend half an hour driving from one call to the next. Worse, Houston's southwest apartment complexes were designed to discourage traffic; police who enter the complexes must confront security gates that sometimes work and sometimes don't.

While Houston should beef up its force, it will never have a cop for every apartment complex. The city needs to reinforce the scant patrol resources it has with superior technology and more aggressive street-level intelligence gathering. "You must intersect [crime reports] with areas and times of day, and put cops there at those times," says Louis Anemone, former NYPD chief of department. "Question everyone and anyone, and focus on the bad guys. . . . Community policing can bring in tremendous intelligence when done right." Yet Houston doesn't have a computerized central data collection and analysis system anywhere near comparable to New York's CompStat. Houston patrol officers, who often work alone, don't

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even have GPS; they must find call addresses on paper maps.

In December, the HPD showed what it can do when it does use data to allocate resources: it devoted Katrina-related overtime patrols (paid for by a $6.5 million federal grant) to "hot spots," targeting areas that have had a marked crime uptick since the hurricane. The department is coupling this initiative with warrant sweeps to take wanted suspects off the streets. The early results in evacuee-packed neighborhoods are promising: over one 19-day period, police apprehended 229 evacuees.

But the department doesn't fully exploit patrolling as an intelligence tool. For example, residents and landlords of apartment complexes complain that loiterers menace them and that trespassers who lurk in their parking lots are responsible for burglaries, robberies, and drug dealing. (Along with violent criminals, Katrina brought drug addicts and new demand for drugs, cops say.) Houston could dispatch overtime shifts to the apartment complexes with the most loitering, menacing, and burglary complaints at the specific times that callers mention. The department could view chronic trespassers and loiterers as a resource, pressuring them for intelligence and then dispersing or arresting them in a targeted broken-windows-policing approach.

The HPD has stepped up recruiting to increase its strength by 100 officers in each of the next few years. But there's a justification for spending more than that, particularly on the best proven technology, to allow the department to deploy its new personnel most effectively. Houston is beginning to show that average police work can affect New Orleans's stubborn crime. Above-average policing could transform vast acres of Houston's low-rise neighborhoods. Skimping here, and allowing already marginal neighborhoods to decay, would take years to undo.

"In New Orleans, 12 percent of those arrested for murder are ultimately incarcerated; in Houston, it's 47 percent."

Crime control can improve the lives of those who came from New Orleans's worst neighborhoods. And working-class New Orleanians are also learning about something else they didn't have much of back home: economic opportunity. As Mayor White told me: "I hope there are people who come from devastated areas who had seen dead ends in their lives and who use this as a time to find hope and opportunity. I've met people like that [from New Orleans]. . . . That is the great thing about America."

Compared with pre-Katrina New Orleans, Houston abounds with jobs. That's partly why its population has grown 23 percent since 1990, while New Orleans's population, before Katrina, had shrunk by 8 percent. Just since Katrina hit, the Houston area has added 40,000 new jobs. Despite an enduring myth that New Orleanians are lazy, they're seizing those jobs, and Houston gives those who worked at low-wage jobs in New Orleans the chance to upgrade their skills and move up.

When Judge Eckels and Mayor White commissioned their job fair in early October, they found that thousands of evacuees couldn't wait to get back to work; 8,500 showed up at the convention center event, and some 2,000 found work that day. Thousands didn't have to seek new jobs: Wal-Mart and Home Depot offered all their displaced employees transfers to their new cities. Some national food chains had the same policy. A federal grant put another 1,300 evacuees to work temporarily in area nonprofits, giving them an alternative to unemployment benefits as they looked for full-time jobs. The state has also used federal funds to train interested evacuees for jobs ranging from construction to nursing.

Many evacuees plan to make Houston their permanent home. Twenty-eight-year-old Satacha Johnson, living in voucher housing on Houston's west side with her nine-year-old daughter, is just one of many young New Orleanians I

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spoke to who plan on staying; she's been working at a Houston charity as she searches for a permanent job. "Who doesn't love New Orleans?" she said. "But there's more opportunity for a single mom in Houston."

Matching Houston's culture of economic opportunity is the culture of striving in its public schools, which took in more than 20,000 new students after Katrina. Their parents are almost uniformly surprised at the quality of the education they're getting.

Stasia Marie Davis, who evacuated from New Orleans East and was about to start work as a teacher's aide when I spoke to her, says that her two high school–age daughters had been in gifted programs at a New Orleans public school but "are struggling to keep up" at Houston's Westfield High School. "In New Orleans, they are preparing them for the tourism business. Here, they are preparing them for college," she told me.

Ariane Daughtry, a Catholic Charities caseworker from New Orleans now working with evacuees, notes that she paid $250 a month in New Orleans to send her son to private school, but in Houston he's thriving, even playing the violin, at a public school where nearly all the kids can read and do math at grade level. William Coleman, who has custody of his grandchildren, told me that the Houston school the children attend call the house if the kids are late or absent: "They didn't do that in New Orleans," he marveled.

At the Briarmeadow Charter School in southwest Houston, principal Lynn Barnes is educating 22 evacuees, ranging from children from affluent New Orleans neighborhoods and suburbs to inner-city kids from New Orleans's Ninth Ward. The nine-year-old charter school is a far cry from the New Orleans public schools the disadvantaged kids attended.

Some of Barnes's new students come from Mildred Osborne Elementary School in New Orleans, where only one-third of the students could read or do math at grade level. Others come from Sherwood Forest Elementary School, where fewer than half could read or do math at grade level. Now, the kids attend a school where 85 percent of fourth-graders can read at grade level, and nearly three-quarters can do math at grade level. Briarmeadow's middle school offers a gifted program, and Barnes expects all her pupils to go on to college.

Teachers as well as parents are pleased. Before evacuating, Warren Johnson taught English at McDonogh #35, one of New Orleans's few high-performing public schools. Now teaching at Yates High School in Houston, he's thrilled with the quality of resources and plans to stay. He notes that the school is well managed and has good security, and the administration works efficiently and "without so much politics." "I hate to talk bad about my city," he says, but some things in Houston "are a bit more logical."

Texas and Houston have already determined that evacuee students badly trail their new peers when it comes to basic skills. Just one measure of the shocking disparity: on a standardized state reading test administered in February, 89 percent of Texas third-graders could read at grade level, while only 59 percent of evacuee students, most from New Orleans, could do the same. In fifth-grade reading, 80 percent of Texas students passed, while more than half of evacuee students failed. (Texas has not yet released reading scores at the school-district level, but Houston students' reading scores have been nearly identical to those of their peers across Texas in the past.) The mayor took note early on of the challenge that New Orleans students face in Texas schools, and used a federal grant to help schools hire 100 tutors and teachers from New Orleans beginning last fall to give evacuee children extra help.

Houston's schools are not perfect; nor are New Orleans evacuees integrating perfectly. At several schools, New Orleans and Houston kids have engaged in large-scale brawls, and I saw competing graffiti, including a tag that said "NO Boyz," in a stairwell at Yates. But Houston boosted security quickly after the early fights, and, just as important, it hasn't given up on its public schools, as New Orleans had. It is still innovating in its quest for greater accountability and better results; in January, for example, over the objections of the teachers'

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union, Houston's largest school district voted to implement a sweeping merit-pay system for teachers.

Further, Texas has nearly 300 charter schools, compared with pre-Katrina Louisiana's 16. After Katrina, Houston started a charter elementary and middle school in partnership with the Knowledge Is Power Program (KIPP) college-prep academy and Teach for America, just to serve evacuee students, with teachers and administrators from New Orleans. Principal Gary Robichaux told the New Orleans *Times-Picayune* that the new charter school, New Orleans West, "functions much healthier than many of the schools did in New Orleans." Robichaux said that most of his eighth-grade New Orleans evacuees can read at only a fifth-grade level, "if they can read at all."

"Texas and Houston have already determined that evacuee students badly trail their new peers in basic skills."

Houston's culture of opportunity leaves little excuse for failure. But Houston must put this philosophy to work in motivating its underclass evacuees. "A lot of people who lived in public housing and were not working, you have to get them used to a different way of living," says caseworker Ariane Daughtry. "The only lifestyle they know is the welfare system, low-income housing. They may be getting help now, but they have to realize they need a plan. [We have to] show them this is a fresh start."

Bob Fleming, Daughtry's boss, concurs that it will be a challenge to "to get down to the 5 to 7 percent who may be dependent. . . . That will be the issue in the end." One measure New Orleans itself is contemplating—barring the unemployed from public housing—will make Houston's job more difficult, as those who aren't working will be likely to stay where they are.

At the biweekly meetings that Mayor White holds on Katrina strategy, everyone knows that this issue is key. Says Jeff Stys, who attends the meetings for United Way, the "main message" for unemployed evacuees now is that "the clock is ticking. Houston has opened its doors. This is time to make sure you uphold your end of the deal."

Houston also has a fiscal motive to ensure that temporary government assistance for Katrina evacuees remains temporary. While the feds have reimbursed the city for many (although not all) of its first-year evacuee costs, they will end that reimbursement once they view the former Louisiana residents as Texans. Louisiana itself has already cut off federal welfare payments to the evacuees, claiming that they no longer live in Louisiana.

Mayor White says he's open to suggestions for Katrina's next phase. This is a perfect opportunity not just for Houston's local charities—including faith-based groups—but also for national social-entrepreneurship groups to help evacuees who aren't used to working, or who are difficult to employ, such as convicted felons or illiterates. Even more ambitious social entrepreneurs could help New Orleanians learn that the "normal" New Orleans culture of single motherhood isn't normal at all. The ultimate challenge for philanthropists and policymakers is to ensure that a new generation of single mothers doesn't set loose another generation of unsupervised violent young men to prey on another city.

Houston's openhearted outreach to New Orleans in its hour of need was an extraordinary gesture, and it saved lives. But Houston will have accomplished a truly heroic task if it can redeem the undereducated, underpoliced, and unmarried underclass that made New Orleans a disaster long before Katrina.

Houston approaches this task with a crucial advantage: its leaders and citizens don't instinctively see big government as the solution—only good government.

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The Mob That Whacked Jersey

How rapacious government withered the Garden State

Steven Malanga

When Cy Thannikary left India to come work at the UN in Manhattan, he settled in Flushing, Queens, and loved the excitement of living in the city. After starting a family, though, he traded New York's hubbub for Freehold, New Jersey, a quiet suburb with lower taxes and affordable housing. That was 25 years ago. These days, Thannikary sometimes feels like he's back in Gotham as he watches his taxes soar and hears neighbors grumble. He has started a new group, Citizens for Property Tax Reform, to fight the special interests that have turned both state and local government into profligate spenders. "Politicians in New Jersey have treated their citizens as ATMs," he complains. "They have no idea how to restrain spending, and more and more people are saying they can't afford to live here anymore."

For more than a century and a half, New Jersey, nestled between New York City and Philadelphia, offered commuters like Thannikary affordable living in pleasant communities. Wall Street tycoons, middle managers fleeing high-priced Gotham once they'd married and had kids, and immigrants who settled first in New York but quickly discovered that they could pursue the American dream more easily across the Hudson—all flocked into the Garden State. Eventually, New Jersey's congenial living attracted even corporations escaping New York's rising crime and taxes. The state flourished.

But today Jersey is a cautionary example of how to cripple a thriving state. Increasingly muscular public-sector unions have won billions in outlandish benefits and wages from compliant officeholders. A powerful public education cartel has driven school spending skyward, making Jersey among the nation's biggest education spenders, even as student achievement lags. Inept, often corrupt, politicians have squandered yet more billions wrung from suburban taxpayers, supposedly to uplift the poor in the state's troubled cities, which have nevertheless continued to crumble despite the record spending. To fund this extravagance, the state has relentlessly raised taxes on both residents and businesses, while localities have jacked up property taxes furiously. Jersey's cost advantage over its free-spending neighbors has vanished: it is now among the nation's most heavily taxed places. And despite the extra levies, new governor Jon Corzine faces a $4.5 billion deficit and a stagnant economy during a national boom.

Unless Garden State leaders can stand up to entrenched interests—and the signs aren't promising—the state may find itself permanently relegated to second-class economic status. New Jersey "could become the next California, with budget problems too big to solve without a lot of pain," warns former Jersey City mayor Bret Schundler. "The old way of raising taxes to solve budget problems has been tried, and it's done nothing but make things worse."

Once a farming corridor connecting New York and Philadelphia, the state that Benjamin Franklin called "a keg tapped at both ends" began its rapid evolution in the nineteenth

FROM THE COLLECTIONS OF THE NEW JERSEY HISTORICAL SOCIETY (6)

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New Jersey's suburban pioneers built magnificent houses like this one in the Oranges in the nineteenth century.

century, spurred by the growth of the railroads. Enterprising New Yorkers like merchant Matthias Ogden Halsted led the way. In 1837, he repossessed a 100-acre farm in Orange, New Jersey—about 12 miles west of Manhattan—and built a magnificent mansion, featuring Corinthian columns that one historian celebrated as "unlike anything the area had ever seen." He subdivided the rest of the farm to provide homes for city friends. These new suburban commuters even chipped in to help build a railway station on the nearby Lackawanna train line—a stop that still serves commuters today.

In 1853, following Halsted's example, Manhattan drug wholesaler Llewellyn Solomon Haskell bought land along a ridge of the

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Orange Mountains, laid down roads, and built grand homes. Thus was born Llewellyn Park, America's first gated community. Described by the *New York Times* in 1865 as "a rough, shaggy mountain site, now transformed into an enchanted ground," Llewellyn Park soon attracted such eminent residents as Thomas Edison, and it boasted magnificent houses designed by noted architects, including Stanford White, Charles McKim, and Calvert Vaux. Soon the entire area around the Oranges blossomed, with stylish homes on broad boulevards. Fashionable New York stores like B. Altman and Best & Co. turned the area's dazzling main shopping strip into the rightly nicknamed "Fifth Avenue of the suburbs."

Jersey's development accelerated during the second half of the nineteenth and the early twentieth centuries, as more and more workers opted for suburban comfort. A new railroad line here, a bridge or road there, would unlock a whole new swath of the state to commuters, igniting countless mini-real-estate booms.

Two rail lines transformed Montclair in the mid-nineteenth century from a sleepy trading post into a bustling New York commuter town, filled with spacious Tudor- and Queen Anne–style homes. Montclair's biggest houses, on a ridge at the foot of the Watchung Mountains facing New York, would one day house many of Gotham's financial elite, including, during the late 1980s, the chief executives of three of Manhattan's biggest banks. In the same way, a causeway over the Shrewsbury River in 1870, linking farmland communities like Fair Haven and Rumson to ferries on the Atlantic, prompted a number of New York financiers, including Jacob Schiff, to build estates in the area and begin commuting across New York harbor to work.

Some 60 miles north of Rumson and 50 years later, construction of the George Washington Bridge, connecting upper Manhattan and the Bronx to northern New Jersey, led to a different kind of housing boom in places like Teaneck, a middle-class town where developers erected English Tudors, Dutch Colonials, and smaller houses of stucco and brick. In the decade leading up to the bridge's opening, Teaneck's population grew fourfold, part of a population upsurge that remade northern Jersey.

As inexpensive mass transportation expanded, Jersey sprouted a dense network of middle-class suburbs, home to many Manhattan middle managers—the traders, back-office managers, and salesmen who serve as corporate New York's foot soldiers. In the 1960s, the Levitt family, famous for converting Long Island farmland into the middle-class suburb of Levittown after World War II, replicated the project on a more modest scale in Somerset, New Jersey, building nearly 1,000 houses in William Levitt's classic Cape Cod design. Middle-income New Yorkers came in droves. Farther north, in Hillsdale, where the Hackensack & New York Railroad once had a terminus, hundreds of modest two- and three-bedroom prewar colonial houses, originally built for railroad workers, formed the core of a housing market dominated by Manhattan commuters. Eisenhower-era ranch houses in Middleton, Morristown townhouse developments, condos on former industrial land in Jersey City and Secaucus—all attracted commuters, so that now more than 300,000 Gotham workers call Jersey home.

Jersey would even cultivate its own patrician dynasties of Gothamites. Shortly before launching the New York–based financial magazine bearing his name in 1917, B. C. Forbes moved his family from Bay Ridge, Brooklyn, to Englewood, New Jersey, on the western slope of the Palisades. After his magazine took off and Forbes became prominent within Englewood—by then home to many of Manhattan's financial elite—his son Malcolm married one of the town's finest, Roberta Laidlaw, whose family owned the New York investment firm Laidlaw & Co. The pair moved into a baronial estate in the rolling hills of Somerset County, deep in the Jersey heartland. Among their neighbors: Aristotle and Jacqueline Kennedy Onassis, former secretary of state Cyrus Vance, and longtime Dillon Read chairman and ex–treasury secretary Douglas Dillon.

The commuters have given New Jersey the highest average family income in the country—$74,000-plus a year. In one five-year period

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LEWELLYN PARK, Orange, New Jersey.

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☞ For fuller particulars of the Park, see article in No. 85 of *Appleton's Journal*, and also Downing's Landscape Gardening."

Llewellyn Park, founded in 1853, was America's first gated community.

during the mid-1990s, Jersey had a net gain of $2.8 billion in family income from New York, thanks to between-state migration, the Empire State Foundation found.

The ex–New Yorkers who formed the Jersey towns favored small government and low taxes, which came to define the state's politics. As early as 1840, the mayor of Jersey City—then a settlement of just over 3,000—boasted of his town's "small amount of taxes levied to support state, county and city government compared to New York and Brooklyn" (an independent municipality at the time). Jerseyans could be downright ornery about taxation. During the Depression, the state's Republican governor, Harold Hoffman, enacted a sales tax; so great was the backlash that the legislature quickly rescinded the levy. By the early 1960s, Jersey was one of only two states without a sales or an income tax; New York had both. Jersey ranked 40th among states in total tax burden, 13 percent below the national average.

The presence of a white-collar commuting workforce—and the low-tax economic climate it helped create—would help New Jersey lure firms fleeing New York. By 1910, more than half the

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Montclair Station, 1913: the railroad made New Jersey suburbanization possible.

state's urban and suburban residents worked in office jobs, as clerks, typists, managers, and executives. When Gotham's corporations, at first seeking space and then, beginning in the sixties, pushed by high taxes and escalating crime, began to abandon the city, Jersey was an attractive option. AT&T, Chubb Insurance, American Standard, Bristol-Myers Squibb, and others began flocking to where many of their employees already lived. Technological advances also helped Jersey draw the back-office operations of major finance players like Merrill Lynch, which kept its Manhattan headquarters but now employed thousands of support workers in cheaper Garden State digs, connected by phone and computer.

The New York corporate exiles nourished New Jersey's economy, just as the commuters did. Starting in the 1950s, Jersey's economy began growing at twice the pace of New York State's and easily outperformed it for most of the rest of the century. Even in finance, New York City's economic engine, New Jersey has almost matched Gotham's growth in recent decades. It added 143,000 financial-sector jobs between 1970 and 2000, compared with 154,000 new jobs in New York City over the same period, as financial wizards no longer chose only to live in the Garden State but also to work there. Even soon-to-be New York mayor Michael Bloomberg got in on the action. From a small Princeton office in the late 1980s, the mayor's company, Bloomberg LP, grew to employ 1,500 in New Jersey by the early twenty-first century.

The features that lured commuters and firms to the Garden State began slowly to erode in the late 1960s, as an expanding state government started shoveling massive amounts of taxpayer money into urban anti-poverty programs and education, usually with little result. Two interlocking forces drove the spending: first, the rise of powerful public-sector unions that pushed effectively for higher pay and benefits, bloating municipal and school budgets and blocking needed reforms not just in cities but across the state; second, the growth in Jersey cities of a new kind of political machine that diverted federal and state urban aid into political favors and patronage, wasting billions on useless and often crooked programs, and turning the cities into expensive wards of the state.

Until the 1960s, Jersey's cities, though small, had been self-sustaining and relatively successful, playing a minor role in the larger regional economy governed by New York. Newark, for instance, became a port town, with a small manufacturing hub that, at its peak in 1930, employed some 66,000 workers out of the city's 450,000 inhabitants. But when race riots and unrest broke out in Newark, Camden, and other Jersey cities during the late 1960s, many residents and businesses fled to the same suburbs that New Yorkers had been flooding into for decades. Cities like Newark ended up with little economic life and mostly indigent populations.

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Further encouraging the exodus was the widespread awareness that the cities had fallen into the grip of corrupt, rapacious political machines. After Newark's riots, federal prosecutors bore down on then-mayor Hugh Addonizio, who had given control of much of the city to Mafia bosses Ruggiero "Richie the Boot" Boiardo (whose crime family inspired *The Sopranos*) and Ray DeCarlo. After the feds convicted Addonizio and several subordinates for corruption, the "reformers" who took over were anything but. New mayor Kenneth Gibson, pledging to end the sleaze and revive Newark, faced ceaseless investigations into his administration, resulting in a string of indictments—including his own on charges of providing a no-show job. Though never convicted, Gibson left office a failure.

"The persistent corruption gave public-sector unions the leverage to wrest control of Jersey's urban agenda."

Corruption probes into the administration of the next mayor, Sharpe James, over nearly 20 years brought down city councilmen, the mayor's own chief of staff, and the police commissioner, who pled guilty in 1996 to pillaging a fund that financed undercover narcotics investigations. Nor was Camden any less shady: since 1981, three of its mayors have been convicted of corruption and deposed.

The persistent corruption, vaporizing billions of taxpayer dollars, gave public-sector unions the leverage to wrest control of the state's urban agenda for their own benefit, leading to even greater waste. Newark's teachers' union, for example, used Gibson's legal woes to seize control of the schools from the mayor and deliver it to a school board—which the union, with more than 4,000 voting members, could easily elect. The result: a long period of school-system mismanagement and fraud, documented in a damning 1994 state investigation, which culminated in state takeover of the system the next year. In his book *Black Mayors and School Politics*, political scientist Wilbur Rich blames the school failure on "the public education cartel" and says that claims by teachers and board members that poverty caused the system to fail "is an insult to the Newark community."

Jersey's cities have never recovered. Newark now has only 280,000 residents, down from 450,000 in happier times. State taxpayers pay about three-quarters of a billion dollars annually to prop up the city's schools and its municipal government. Crime is rampant, jobs scarce. Newark's problems have radiated to neighboring towns, too, blighting once-healthy communities. East Orange—where Matthias Ogden Halsted brought his Manhattan pals—seethes with gang violence, with a crime rate three times the national average. Family income is less than half the state average; once-grand homes sit abandoned and boarded up. Irvington, which Philip Roth in *Portnoy's Complaint* depicted as filled with alluring *shiksas* living in Norman Rockwellesque tranquillity, is today one of New Jersey's poorest communities, wracked by double-digit unemployment and a crime rate as bad as East Orange's.

In Camden, the nation's murder capital, the state had to take over the failed school system and the city's out-of-control finances. Trenton, Paterson, and other Jersey cities are similarly dysfunctional.

The latest installment of this ruinously expensive mess is a court-ordered state effort to rebuild dysfunctional urban school systems. In a series of decisions beginning in the 1990s, the New Jersey Supreme Court has forced the state to boost spending dramatically in city schools. Going beyond fiscal equity cases in other states, which demand that prosperous suburban residents contribute more to poor urban school systems, the Jersey supremes mandated that each district be able to spend as much as the state's

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richest jurisdictions—up to $18,000 per pupil. The court also required the state to establish universal preschool and to embark on a $2 billion school building program.

Once the courts decreed this modern-day exercise in taxation without representation, union-backed pols piled on. In 2001, the state legislature inflated the school construction program to a budget-busting $8.6 billion—a gift not only to the education lobby but also to the construction unions and other tax eaters. To evade voter approval (which the state constitution requires) for the lavish spending, the legislature created a largely unaccountable bond-issuing authority, a constitutional dodge that Jersey's courts blessed. The patronage-ridden authority proved so corrupt that it quickly spent all its borrowed money, while completing only half of its building projects, leaving taxpayers under court order to pour in yet more funds.

By the 2003–04 school year, state taxpayers, in a colossal income transfer, were handing over a jaw-dropping $4 billion annually to support education spending in Jersey cities. Taxpayers from elsewhere in the state footed fully 90 percent of Camden's education bill, while the city itself contributed a mere 2 percent, says the school reform group EducateNJ. In Trenton, state taxpayers paid 82 percent of the education bill; local sources ponied up just 8 percent.

Yet even as Garden State taxpayers have showered nearly $30 billion on city schools over the last decade, neither the courts nor the officials overseeing the urban school districts have demanded fundamental reform of the school bureaucracies, let alone innovative solutions like vouchers. The money thus has made little difference. True, state tests show a recent uptick in fourth-grade reading and math proficiency (though little gain for eighth-graders and high school students). But the improvements, such as they are, result at least partially from the state dumbing down its tests over the last few years. Soberingly, on national tests, Jersey students show insignificant gains for all grade levels since 1992 and considerably lower levels of math and reading proficiency than the state tests claim.

In recent state legislative testimony, the vice president of Newark's Public School Advisory Board starkly framed the lack of progress. "There has been little, if any, real success that the minority and low-income children of my city can claim," she said, thanks to the "abysmal failure of our system." In Camden and Newark, that system spends nearly $1 billion in state funds annually—to produce a scant 2,000 high school grads a year.

It's hard to overstate the might that public-sector unions—the teachers' union, above all—now wield in New Jersey. With 62 percent of its state and local workers organized, New Jersey has the second-highest level of public-sector unionization in the country, behind only New York, according to unionstats.com.

The unions have wielded their clout to win among the richest benefits and highest pay of government workers anywhere. Teachers earn an average of $56,000 a year, with some of the highest salaries going to teachers in the state-financed urban districts. Not only are health and pension benefits for state workers—including the possibility of retiring at 55 with cost-of-living pension adjustments for life—plusher than the private-sector norm; on average, they're 10 to 15 percent above what other state governments grant workers. Last year, pension and health benefits cost the state $2.5 billion, or 9 percent of the total budget. By 2008, the tab will grow to nearly $5 billion, and by 2010, $6.7 billion—21 percent of the projected state budget.

The unions ferociously protect their spoils. The New Jersey Education Association was the prime mover of a $300,000 ad campaign opposing a thus-far-unsuccessful effort by taxpayer groups to call a constitutional convention to fix Jersey's tax woes. Two years ago, facing taxpayer pressure, the state legislature took up a bill to limit annual school spending hikes to 2.5 percent, or the rate of inflation, whichever was less. The teachers' union leaned on legislators and got the word "less" changed to "greater," inverting the bill's intent. The Communications Workers of America, representing government employees, strongly backed a recent $1 billion increase in taxes on Jersey businesses, running radio ads demanding that firms pay their "fair share."

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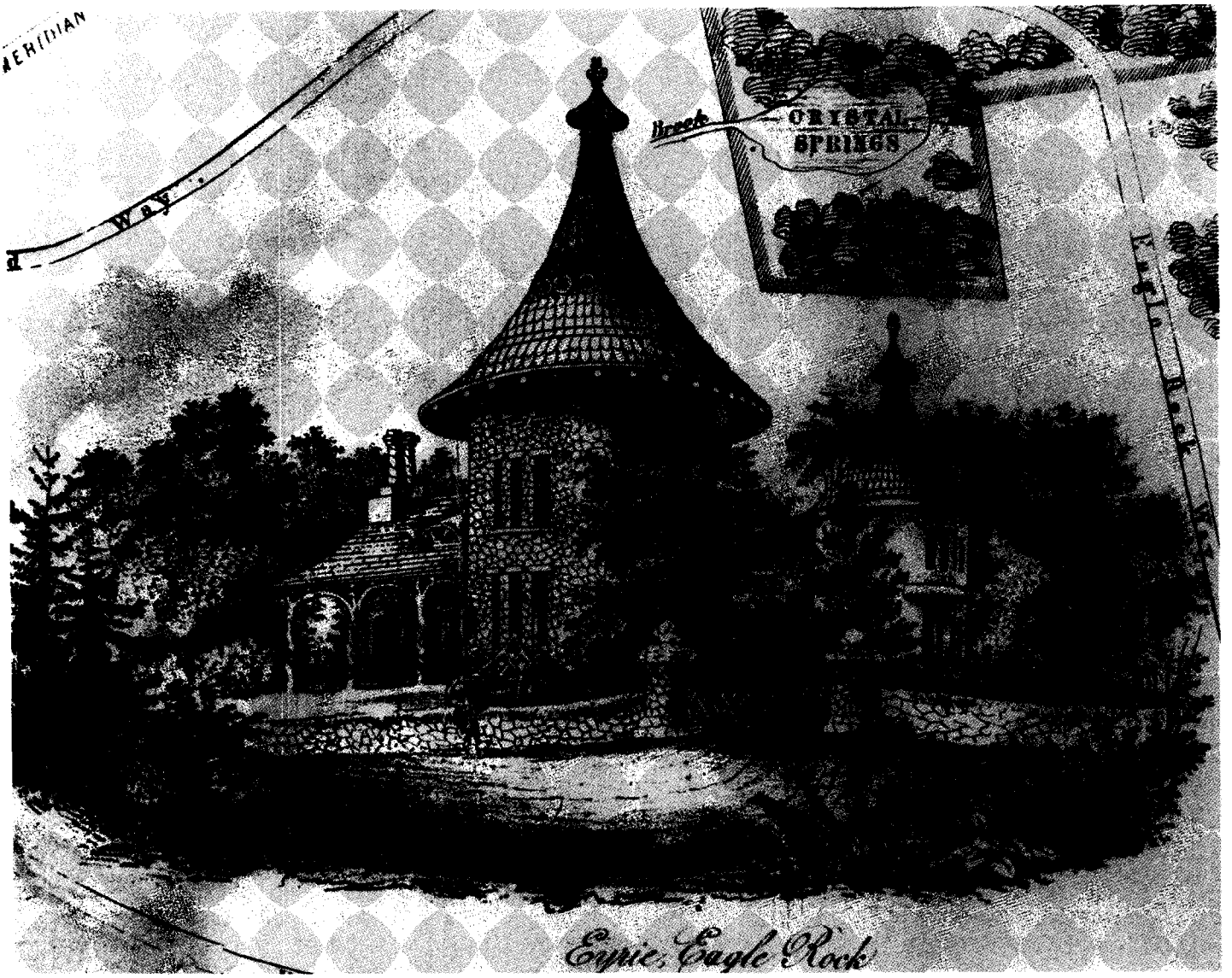

Jersey offered commuters space, quiet, and low taxes.

All the union- and court-driven spending and misspending has burdened New Jersey citizens and firms with heavy taxes and led to a multi-billion-dollar redistribution of income from suburban counties to the state's urban core—and from private to public employees. Jersey's wealth belt—six adjacent counties in the state's center (Hunterdon, Mercer, Middlesex, Monmouth, Morris, and Somerset)—handed over $4.2 billion in sales and income taxes in 2003 but got just $2.2 billion back from the state in spending, a Rutgers University study found. By contrast, Jersey's most urban counties—Camden, Essex, Hudson, Passaic—paid $1.6 billion in taxes in 2003 but enjoyed $3.6 billion in aid.

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Jersey's government couldn't keep its hands off commuter wealth.

Jersey's progressive income tax accounts for much of this skewed distribution. Statewide, families making $150,000 a year or more are just 9 percent of tax filers but pay 55 percent of income taxes—a percentage likely to rise after last year's levying of a so-called millionaires' tax that hiked rates for residents making $500,000 or more, giving them a top rate of nearly 9 percent. (Neighboring Pennsylvania has a flat 3.07 percent rate for all taxpayers.)

Since their residents get precious little in return for their state taxes, most of Jersey's suburban governments must finance their operations through property taxes—one reason those taxes are the nation's highest, according to the Tax Foundation. Today, Jersey suburbanites find themselves paying for *two* sets of local governments and *two* school systems: their own (through property taxes) and those of cities like Camden and Newark (through income and sales taxes).

Many ordinary, hardworking New Jersey residents feel like the taxman won't rest until he's pushed them out of the state. Citizens for Property Tax Reform member Jo-Anne David lives in a small duplex on a 3,000-foot lot in rural Jamesburg but pays some $5,000 a year in property taxes. She bluntly sums up her situation: "I can't wait to retire and get out of this state. I can't afford to live here, and it's a shame." Leaving Jersey has become the sensible option for middle-class retirees, says Lou Albright of suburban Gloucester Township. "I have lived and worked in New Jersey all my life and now in retirement can no longer afford to live here," he observes. "In so many ways the state tells you when you have completed your working life: We don't want you—move on to Delaware or some other tax-friendly state."

Hefty tax hikes are also leading many New York workers to reconsider their choice to live in Jersey. When Jerry Cantrell moved to Randolph, New Jersey, from a Pennsylvania suburb ten years ago so that his wife could take a New York corporate job, he knew that his property taxes would go up—from $1,800 in Pennsylvania to $5,000 in Jersey. But he didn't expect them to keep rising—nearly 50 percent since he moved, so that he now shells out nearly $7,500 a year. "Somehow you don't believe they can keep going up so much," complains Cantrell, who leads the Silver Brigade, another taxpayer rights group. Cantrell has gotten more than he bargained for in Jersey in other ways. After leading a campaign to defeat a $45 million school building plan that the local education establishment supported, he had his house pelted with eggs and found threatening notes stuffed in his mailbox.

Jersey's taxes have arced upward for 40 years, interrupted only briefly by then-governor Christine Todd Whitman's mid-1990s income tax cuts. But state taxes rose most radically from 2002 through 2004, after Democrat James McGreevey

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became governor and the Dems, with union backing, seized control of the legislature.

McGreevey jacked up taxes and fees 33 times—totaling a whopping $3.6 billion—during his short tenure, which ended in less than three years, after the public learned that he had given a state job to his purported homosexual lover. Though his new "millionaires' tax" got most of the attention, the middle class has taken a hard hit. McGreevey hugely hiked the tax on home sales, for instance, affecting some 140,000 families yearly, most of them middle-class. A Jerseyan who sells his $450,000 home must now pay a whopping $3,695 tax, an 80 percent increase; selling a modest $300,000 house would require shelling out $2,200, a 72 percent hike.

"Many hardworking New Jersey residents feel like the taxman won't rest until he's pushed them out of the state."

Under McGreevey, New Jersey also instituted its own estate tax, kicking in at $675,000 in assets, well below the $2 million starting point for the federal death tax. Now a Jersey resident dying with $1.9 million in savings will owe the state nearly $100,000—an egregious levy that makes Jersey Number One in the country in per-capita death-tax collections. Perhaps to protect its residents from dying with too much wealth, the state also raised taxes on retirees with $100,000 or more in annual income, charging them extra to help pay public-sector retirees.

Spending as wildly as he taxed, McGreevey borrowed nearly $2 billion to finance a colossal 17 percent increase in his last budget. Though the state supreme court judged that move unconstitutional, it let the action stand, because the money had already been appropriated.

Such reckless taxing and spending will surely intensify the flight from a state that once drew residents from elsewhere in the U.S. The Garden State recorded the fourth-highest net domestic out-migration in the country from 1995 to 2000—losing 182,000 more residents to other states than it gained. Every one of the state's 21 counties lost more residents to other states than it gained, a bleak contrast from the 1960 census, which estimated that Jersey had a net in-migration of more than 500,000 residents.

The shift isn't just costing the state its residents. In 2004 alone, New Jersey netted a loss of more than $1 billion in personal income from out-migration, according to Internal Revenue Service data. "Jersey has blown a golden opportunity," says former Republican presidential candidate Steve Forbes, a resident of Far Hills, New Jersey. "It could have been like Hong Kong, a haven for wealth and industry among high-tax neighbors like New York. Instead, Jersey's now losing its own residents to places like North Carolina."

McGreevey also chilled the state's already inhospitable business climate. He boosted corporate taxes and ended the ability of struggling companies to deduct losses from their tax bills—one of the most ruinous corporate tax schemes in the nation. When the head of Cincinnati-based Federated Department Stores, one of Jersey's biggest employers, noted that its state tax bill would more than double (to $10 million) and that it would reconsider any further expansion in the state, McGreevey attacked the company, challenging it to slash executive pay. His tax regime "drastically alters New Jersey's corporate tax landscape, making it inhospitable to large corporations," observed Glenn Newman, former deputy commissioner in New York City's Department of Finance.

Meanwhile, Democratic legislative leaders installed as heads of the assembly and senate labor committees two lawmakers who also are union officials—thereby putting labor legislation into the hands of union bosses. Since then, the legislature has passed draconian new laws that require companies on public projects to pay union wages and that subject violators to *criminal* charges, not just civil fines. Jersey solons have also passed an "instant unionization" bill that

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lets union locals organize workplaces simply by getting a majority of workers to sign cards—no need for a secret ballot anymore. "It seems Trenton looks for ways to discourage firms from moving here or expanding here," corporate CEO Fred Barré told a gathering of the state's manufacturers last fall.

Not surprisingly, a place that big employers once viewed as a safe haven now ranks low on the list of places to do business. The Beacon Hill Institute, an economic research group, recently ranked New Jersey as the seventh-worst state in the country for business—and noted that Jersey had fallen more than any state since its previous survey a couple of years back. The Tax Foundation finds the state's business-tax burden the country's second-worst. Economy.com calculates the cost of doing business there the third-highest in the U.S.

The higher taxes and tangle of new regulations have nearly halted what was once a regional jobs locomotive. Though the state's economy easily outperformed the rest of its region for the past 50 years (and occasionally even outpaced the nation), it has grown at only one-half its 1990s rate, and only one-third the rate of its 1980s boom, during the current robust national expansion. In a report issued late last year, Rutgers economists James Hughes and Joseph Seneca identified as a chief culprit in Jersey's economic decline the state's "recent intense focus on income redistribution."

Can New Jersey break the stranglehold that unions have on its government? Might it restrain spending, cut taxes, and improve the state's dismal business climate? So far, Jersey doesn't seem headed in that direction under the new Democratic governor, Jon Corzine.

During his five years as U.S. senator from New Jersey, the former Wall Street executive was consistently one of the Senate's most liberal members, with a long record of favoring higher taxes and greater spending. He won the 2005 Jersey gubernatorial election on a platform that promised over $1 billion in tax relief to property owners, but—just like his hapless Republican opponent, Douglas Forrester—he identified no significant cuts in state spending to free up that revenue. The money would come from revenue growth, he claimed—an unrealistic goal in a state with a struggling economy and a colossal deficit. Faced with the reality of governing, Corzine has acknowledged that the state's fiscal condition is worse than he thought, and his advisors have begun floating tax increases as a solution.

Corzine unfortunately gives no sign of taking on the culture of political bosses and corruption that plagues the state. In a dismaying early move, he selected as his Senate replacement Representative Robert Menendez, the de facto leader of the Hudson County Democratic political machine. Even the liberal *New York Times* objected.

A crucial question for Jersey's future is whether taxpayers can force Corzine to stick to his campaign pledges on taxes and corruption. The state's growing taxpayer movement is not as effective as the revolt against Democratic governor Jim Florio's 1991 tax hikes, which sparked a Republican takeover of the legislature the next year and Florio's own electoral loss to Whitman in 1993. Today, angry Jersey taxpayer groups feel frustrated, having watched better-organized unions block their constitutional-convention plans. Like taxpayer groups around the country, Jersey taxpayers are discovering that, since the last big taxpayer revolt of the early 1990s, their opponents, especially the public-sector unions, have grown stronger and smarter, making ad hoc citizen anti-tax campaigns more difficult. Aided by the courts and the vast expansion of budgets during the flush 1990s, New Jersey's tax eaters have little by little created a full-fledged example of the kind of regional government that the Left touts these days—a government that forces businesses and residents who have fled the dysfunction of the cities to pay the tab for those urban problems, whether they like it or not.

Further, Jersey is part of a cultural shift that is changing politics in many northeastern areas, as some high earners abandon traditional middle- and upper-class fiscally conservative values and

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Thomas Edison's "Glenmont" in Llewellyn Park

vote liberal instead. In national elections, Jersey today is now reliably in the "blue" column. The trend is also showing up in local elections, where longtime Republican strongholds like Millburn, Summit, and Madison have elected Democratic city councils and mayors for the first time. Jersey may soon resemble its neighbor, New York City, as a place where the rich who tolerate high taxes or consider them a social obligation live side by side with the poor, but with a shrinking middle class.

In short, it may be that New Jersey, having for years enthusiastically welcomed New York's residents and jobs, is now watching the Empire State take a measure of revenge as its neighbor settles into a familiar high-tax, low-growth inertia. Jersey has caught a bad case of the blue-state blues.

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How Welfare Reform Worked

Though successful beyond anyone's wildest dreams, welfare reform left key problems unsolved.

Kay S. Hymowitz

Welfare reform celebrates its tenth anniversary this year, and celebrates seems the right word. As most readers know, Temporary Assistance for Needy Families (TANF) ended the much-despised Depression-era federal entitlement to cash benefits for needy single mothers, replacing it with short-term, work-oriented programs designed and run by individual states. Its success has surprised just about everyone, supporters and naysayers alike.

So it seems a good time to remember the drama—make that melodrama—that the bill unleashed in 1996. Cries from Democrats of "anti-family," "anti-child," "mean-spirited," echoed through the Capitol, as did warnings of impending Third World–style poverty: "children begging for money, children begging for food, eight- and nine-year-old prostitutes," as New Jersey senator Frank Lautenberg put it. "They are coming for the children," Congressman John Lewis of Georgia wailed—"coming for the poor, coming for the sick, the elderly and disabled." Congressman William Clay of Missouri demanded, "What's next? Castration?" Senator Ted Kennedy called it "legislative child abuse," Senator Chris Dodd, "unconscionable," Senator Daniel

Graphs by Alberto Mena

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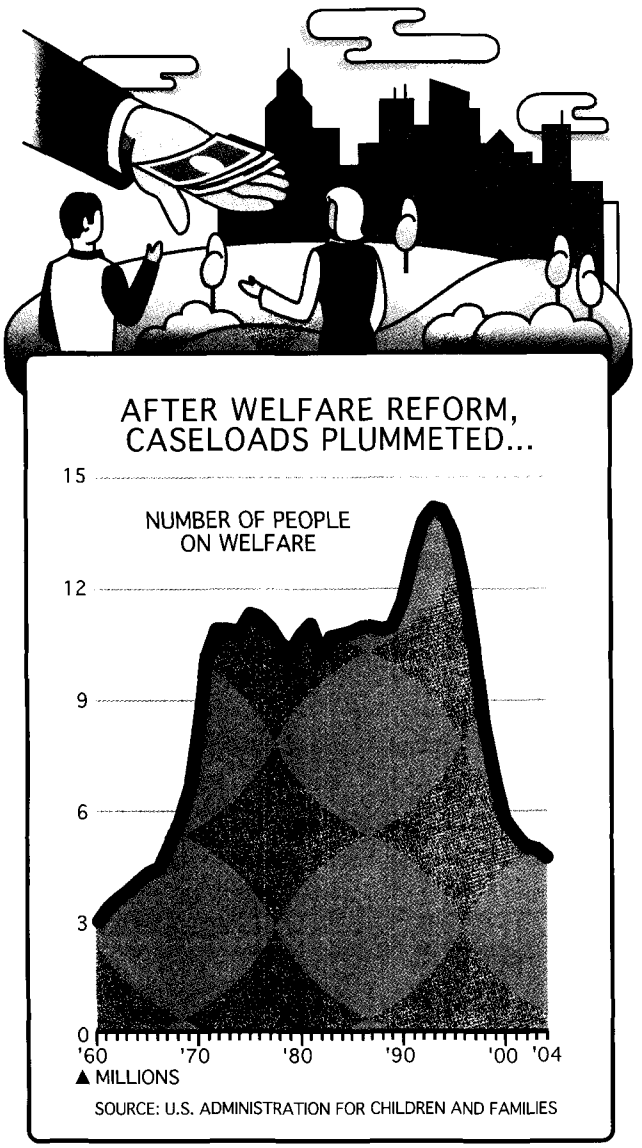

Patrick Moynihan—in what may well be the lowest point of an otherwise miraculous career—"something approaching an Apocalypse."

Other Washington bigwigs took up the cry. Marion Wright Edelman of the Children's Defense Fund called the bill "national child abandonment" and likened it to the burning of Vietnamese villages. Immediately after President Clinton signed the bill, some of his top appointees quit in protest, including Edelman's husband, Peter, who let loose with an article in *The Atlantic Monthly* titled, "The Worst Thing Bill Clinton Has Done." No less appalled, the *Chicago Tribune* seconded Congresswoman Carol Moseley Braun's branding the bill an "abomination." And while in 2004 the *New York Times* lauded the legislation as "one of the acclaimed successes of the past decade," the editors seem to have forgotten that they were irately against it before they were for it, pronouncing it "draconian" and a "sad day for poor children."

It's worth recalling the outcry at this anniversary moment, not in order to have a gotcha-fest, pleasurable as such an exercise can be. The truth is that many of welfare reform's promoters were not spot-on in their predictions, either, and their expectations require some Monday-morning quarterbacking, too. But the apocalyptic scaremongering of reform opponents on the one hand, and the relative benignity of the bill's consequences on the other, prompt the obvious question: How is it that so many intelligent, well-intentioned people, including many experts who made up the late twentieth century's Best and Brightest, were so mistaken—mistaken not just in the way a weatherman who overestimates the strength of a snowstorm is mistaken, but fundamentally, intrinsically, and epistemologically *wrong*?

Before examining *why* so many people were wrong, let's look at exactly *how* they were wrong—an easy task, given the Everest of data on welfare reform's aftermath. TANF did not include a federal jobs program for the poor—though many wanted it to—but it has ended up being a WPA for social scientists, who have been busily crunching just about every number that happened to wander anywhere near a welfare recipient for the past ten years.

The most striking outcome has been the staggering decline in the welfare rolls, so large it has left even reform enthusiasts agog. At their peak in 1994—the rolls began to shrink before 1996, because many states had already instituted experimental reform programs—there were 5.1 million families on Aid to Families with

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Dependent Children, the old program. Almost immediately, the numbers went into freefall, and by 2004 they were down by 60 percent, to fewer than 2 million. A lot of reform opponents—the unreformed, so to speak—tried to chalk this up to the booming economy of the later 1990s. But according to former congressional staffer Ron Haskins, author of a history of the reform due out this fall, that doesn't make sense: in the 41 years between 1953 and 1994, he points out, the welfare rolls had declined only five times, and only once (between 1977 and 1979) for two years in a row. Compare that with the present case, when the rolls continued their fall even after a recession began in 2001, and when 2004 marked the tenth continuous year of decline.

Caseload declines are all well and good, but what caused opponents—and many proponents as well—to lose sleep was what would happen to women and their children once they left the dole. There were four chief concerns: First, would welfare leavers find jobs? Second, would they sink even deeper into poverty? Third, would their children be harmed? And fourth, would the states take advantage of the wide flexibility the bill gave them on implementation to join what many anticipated would be a "race to the bottom"?

So let's consider concern number one: Did women who left the rolls actually go to work? The answer is: more than almost anyone had predicted. According to one Urban Institute study, 63 percent of leavers were working in the peak year of 1999. True, some studies showed numbers only in the high fifties, but even these findings were much better than expected.

Nevertheless, a lot of skeptics still weren't biting. It was the luck of a boom economy, they said; just wait until the job market sours. Well, the recession came in 2001, and though it was no picnic, it was—once again—nothing like what had been feared. As of 2002, 57 percent of leavers continued to punch a time clock. That, the critics warned, was only because the first recipients to leave welfare were likely to be the most competent. Just wait until we're dealing with the most dysfunctional, those who have the most "barriers to employment"—from limited education or work experience to English-language deficiency or mental disability.

But even there the news was encouraging. The Urban Institute kept a close eye on the caseload composition in welfare reform's early years and found that the proportion of highly disadvantaged women was no greater in 1999 than in 1997. A 2003 study by June O'Neill and Anne Hill found a large increase in the employment of some of these women: for example, in 1992 only 31 percent of young single mothers who were high school dropouts were employed; by 2000, 50 percent had jobs. And none of this takes into account the women who under the previous regime might have gone on welfare but, after TANF, with its time limits and hassles, never did. The percentage of employed single mothers rose, in the years following reform, from 45 percent in 1990 to 62 percent in 2005—nearing the employment rate of their married counterparts.

What about concern number two—that welfare mothers would sink deeper into poverty? Shortly before TANF passed, the Urban Institute released a report, solicited by a wavering Clinton administration, warning that welfare reform could impoverish an additional 2 million people. Reform Jeremiahs waved the report around as scientific proof of their worst fears. Even if some welfare mothers did find jobs, they argued, they would merely be stocking shelves at Duane Reade or making hotel beds, the proverbial "dead-end jobs" that would leave them worse off than on the dole.

Though a lot of women did take low-paying service jobs, the unreformed got this one wrong, too. For one thing, they failed to consider the Earned Income Tax Credit, whose expansion in 1993 meant a 40 percent boost in annual earnings for a minimum-wage worker with two kids. Most leavers, though, were doing better than minimum wage. In 2002, the same Urban Institute that had predicted TANF disaster found that the median hourly wage for working former recipients was around $8 an hour. Moreover, O'Neill and Hill discovered that, just as with most other people, the longer recipients

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were in the job market, the more they earned; four years off welfare, only 4 percent of working single mothers—and only 8 percent of high school dropouts who were single mothers—were earning minimum wage or less.

As a result, most welfare leavers had more money than when they were on welfare. The poverty rate for single women with children fell from 42 percent in 1996 to 34 percent in 2002; before 1996, it had never in recorded history been below 40 percent. This was the first boom ever where poverty declined faster for that group than for married-couple families. Nor did leavers disdain their "dead-end jobs." Studies consistently found that ex-recipients who went on to become waitresses, grill cooks, and security guards took pride in being salarywomen.

"Did women who left the rolls actually go to work? The answer: more than almost anyone had predicted."

Still, it's fair to say that while post-reform America did not look like Calcutta, it was no low-wage worker's paradise, either, especially as the economy weakened in late 2001. Ex–welfare mothers were still poorer than single mothers overall. Some who worked had less income than on welfare. Many were not working full-time, and an estimated 40 percent of those who left the welfare rolls returned later on. In 1999, close to 10 percent of leavers were "disconnected"—neither working nor on welfare nor supported by a working spouse. By the recession year of 2002, that number had risen to almost 14 percent. From the beginning, studies from the Children's Defense Fund and the Center for Budget and Policy Priorities warned of an increase in the number of families in deep poverty, and a steady stream of rumors claimed that soup kitchens and homeless shelters had crowds of ex-recipients clamoring at their doors.

But at least some of these warnings turned out to have been yet more crying wolf. Those who returned to the dole tended soon to find other means of support, getting a new job, signing up for disability or unemployment insurance, or turning to employed partners. As for deepening poverty, experts are often unsure what to make of official estimates of the income of the poorest of the poor, since they may have other sources of support than reported income. So they try to see if the income numbers conform to other measures. There was no evidence that single mothers were moving in with relatives, as you might expect if money were that tight. Harvard researchers Christopher Jencks and Scott Winship, neither of them avid reform supporters, found that, despite a big drop in the number of families using food stamps, worry among single mothers and kids about being able to afford the next meal declined between 1995 and 2000, and though such insecurity increased in the early 2000s, it never rose to pre-reform levels. Moreover, the lowest earners were buying more—spending money that, according to official numbers, they didn't have.

And that takes us to concern number three—the kids. Children were the unreformed's most lethal weapon: the image of kids starving in the streets, sleeping on grates, begging from strangers, and neglected and abused by desperate mothers, was enough to make the most robust reformer queasy. But the predicted Dickensian purgatory also turned out to be wrong. There may have been an increase in the number of children in foster care, but child abuse and neglect numbers are, depending on what measures you use, either unchanged or down.

More striking was what happened to rates of child poverty. They not only went down; by 2001, they hit all-time lows for black children. And though the numbers drifted up again during the recession, they were still lower than they had been pre-reform. On other measures, the young kids of ex–welfare moms are no worse off than under the old regime. Though some studies

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find lower achievement and more problem behavior among adolescents, the big picture doesn't show teen children in more trouble post-reform. After 1996, juvenile violence and teen pregnancy continued to go down, as they had since the early nineties.

As for the anti-reformer's final concern—the states' "race to the bottom"—that dog didn't bark, either. True, the enemies of reform might point at the 20-odd states that introduced a "family cap," which sought to stem illegitimacy by denying any increase in benefits to women who had another child while on welfare, and whose efficacy remains uncertain. But there's little question that the unreformed were wrong here as well—for the fourth time. The states were, if anything, *nicer* than the feds. No state barred cash benefits to teen mothers, though TANF permitted them to do so. Forty-seven states made it easier than the old system for leavers to keep some of their cash benefits when they first went to work. Many states, including New York, did away with TANF's five-year time limit for all intents and purposes by using state dollars to pick up the tab for those still on the dole at the time and deemed unable to work.

As caseloads declined, the states moved the federal money they would have spent on welfare benefits into work support—transportation, child care, and the like. In fact, under the states' management, welfare has morphed into an unprecedentedly generous work-support program. The real proof that the states were not the scoundrels that opponents had warned they would be came as Congress debated reauthorization after TANF expired in 2002. Reformers argued for even stricter federally mandated work requirements, while those who once warned that the states would engage in a race to the bottom demanded more state control.

This, then, is where we find ourselves today, ten years after reform: a record number of poor single mothers off the dole and the majority of them gainfully employed; less poverty among single mothers, especially black single mothers, as well as their kids; children adjusting well enough; and state governments taking care of their own. The situation is so far from what experts predicted that, as New York University political scientist Lawrence Mead has put it, it brings to mind the Sovietologists at the fall of the Soviet Union.

So how do reform opponents explain what went wrong when things went right? Some, like the team at the Children's Defense Fund, just continue to rejigger the numbers in dogged pursuit of evidence that the situation is much worse than anyone will admit. Others have been self-reflective. In 2004, Andrew Cherlin, one of the nation's top family scholars, gave a revealing speech to the annual meeting of the American Sociological Association, in which in light of his own study's benign findings, he tried to reassess his own earlier opposition to reform. "How should progressives respond to what we know so far about welfare reform and children?" he asked. "By progressives, I mean leftist/liberal and feminist scholars and observers, who, based on past experience, probably constitute 80 to 90 percent of this audience." His answer suggests some serious soul-searching. "[T]here may be something to the idea that long-term dependency on public assistance is detrimental," he conceded, though he had always "rejected this idea out of hand prior to 1996." Poor mothers "derive a basic dignity" from work. In fact, he continued, "as a result of what I have seen, I now think the term 'dead-end job' is a label that often doesn't fit the perceptions of low-income workers; and I will not use it again."

It was a thoughtful admission, yes, but only a start. "Progressives"—a term that, given the present context, seems due for retirement—need to go much deeper than that. It is not simply that they were wrong in making a few isolated predictions; after all, there were bound to be legitimate questions about how to transform welfare and about what would happen afterward. It's that those predictions rested on a scaffold of moldy assumptions not just about poverty but about what kind of country we live in, how human beings decide to live their lives, and what role government plays in those decisions—in other words, about our politics in the deepest sense. "At times," Jason DeParle writes in his fine book *American Dream*, as he describes the

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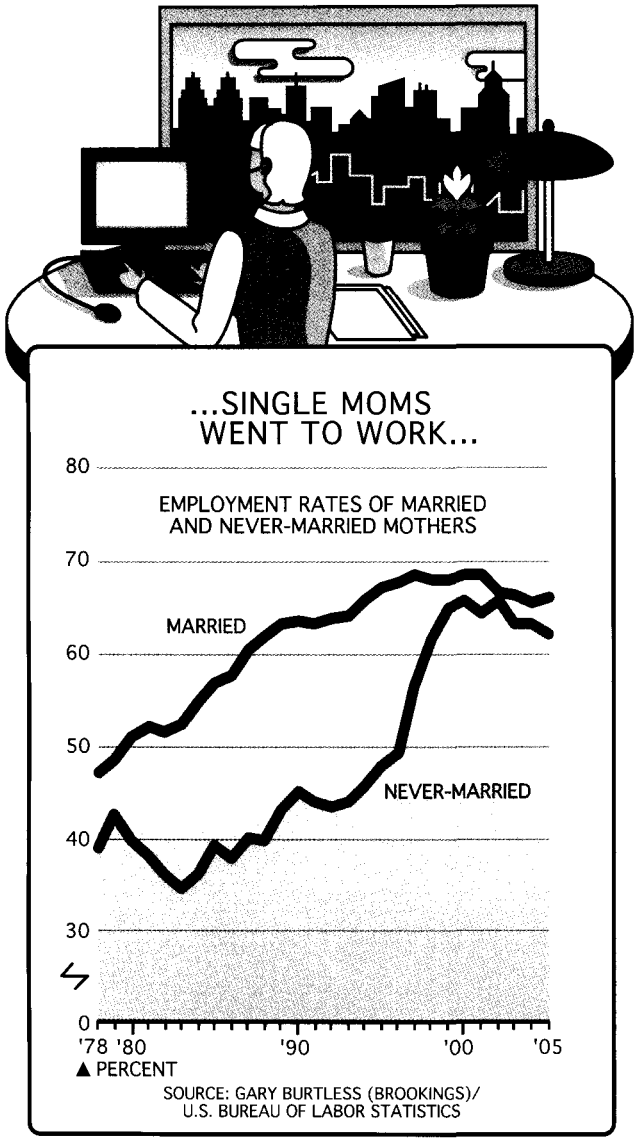

debate in Washington in 1996, "it seemed the very idea of America was on trial."

Consider the assumptions of these "progressive pessimists," as we'll call them, about what motivated American opposition to welfare. Their answer appears to be: greed laced with a hefty shot of malice. They repeatedly compared what they viewed as the paltry social welfare spending of the United States with that of Western Europe, whose large welfare states supposedly reflected the citizenry's generosity. Americans, they said, were either indifferent or—some on the extreme Left argued—hostile toward the less fortunate. Americans want to "punish" or "scapegoat" the poor. They enjoy "the politics of meanness," a phrase coined by then–*Times* columnist Anna Quindlen and repeated persistently by the liberal commentariat. This view led to the expectation that states would "race to the bottom." After his intemperate *Atlantic* article, Peter Edelman warned that ending the federal entitlement meant that states could "do anything they want"—and what they wanted, implicitly, was to let the poor starve.

Progressive pessimists were blind to the promise of reform partly because they believed that the American discomfort with welfare was really a mask for racism. The term "progressive" may imply forward thinking, but in many ways the pessimists are still living in George Wallace's America. Welfare recipients were, and are, disproportionately black: African Americans totaled about 37 percent of the welfare rolls in 1996, though they were only about 12 percent of the population. If Americans didn't like welfare, pessimists reasoned, it was because they didn't like black people. Wags referred to welfare reform as "racism in drag" and to workfare as "slavefare." A perfect example of the Left's assumption that racist motives prompted welfare reform is a 1999 book called *Why Americans Hate Welfare*, by Yale political scientist Martin Gilens. Far from being mean-spirited, Americans are actually a fairly generous people, Gilens argued. If they hate welfare, it's not because they are tight; it's because they don't want to help black folks. With the help of a subliminally racist media, they look at black welfare recipients as lazy freeloaders, just as they did in the Jim Crow South. That Gilens wrote his book just as the Americans who hated welfare were helping to push black child poverty rates to their lowest levels in history seems not to have caused him a moment's cognitive dissonance.

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Progressive pessimists were especially gloomy when it came to the American economy. You can't blame them for not foreseeing the economic exuberance of the second half of the 1990s; few did. Less defensible was their deep-rooted assumption that poverty was "structural," as permanent a part of the American scene as the Appalachian Mountains. Economic growth might be useful to the Mercedes-driving rich but not to the poor, they asserted. No matter how strong the economy, there still wouldn't be enough jobs, employers wouldn't hire welfare mothers, and those who did would offer them only the most demeaning and temporary work.

From this vantage point, any talk about "personal responsibility" was only more evidence of racially tinged victim-blaming. Nothing distinguishes progressive pessimists from their pro-reform counterparts more than their attitudes toward self-sufficiency. For the pessimists, poverty in America was so severe, and dead-end jobs so demoralizing, that they almost invariably shattered the individual will (and, incidentally, led to such social pathology as child abuse). That's why, if manufacturing jobs moved out of the ghetto, the pessimists explained, the poor could not be expected to move where there were more opportunities—though throughout the eighties and nineties, millions of poor immigrants were doing just that.

For reformers, on the other hand, there was much to learn from "immigrant optimism," as it's sometimes called. People are capable of far more resourcefulness and resilience than welfare recipients had been given a chance to show, they contended. This understanding was one reason why Bill Clinton rejected the advice of most of his advisors and signed welfare reform in August 1996. "I've always known poor folks," he told Jason DeParle in an interview quoted in *American Dream*. "I've just never thought they were helpless." DeParle's own research reached the same conclusion.

Social science tended to reinforce the dark assumptions of progressive pessimists. After all, as Andrew Cherlin's speech to his audience of sociologists suggests, the pessimists dominate the research community. The handful of pro-reformers doing poverty research didn't get much respect, until the Republicans took over Congress in 1994. According to a 2000 article on the politics of welfare reform by Diana Zuckerman, a onetime Democratic congressional staffer, House and Senate Democrats were working under "very liberal leadership of many congressional committees," who were used to getting their numbers from groups like the Children's Defense Fund and the Center for Budget and Policy Priorities. Staffers tended to dismiss the very different findings of more conservative experts as "ideological," an irony that would be laughworthy if its consequences hadn't been so dire.

But bias is not the most important reason that social-science research supported the pessimists and failed to predict accurately what would happen after welfare reform. In poverty research, labor economists—credited with having the most sophisticated measurements—are key players. But labor economists have a limited framework for analyzing human motivation and almost never deal with actual poor people, a combination that leaves them vulnerable to the cause-correlation confusion that so bedevils social science. Worse, what they can't measure—and what therefore never entered into progressive thinking—is the key role that values, or culture, plays in making people into productive citizens who go to school, do their homework, plan their lives, and work to support themselves and their families.

Human beings tend to do pretty much what they are expected to do. When the culture expects self-sufficiency, people will try to achieve it. When the culture sends mixed messages about self-sufficiency, as it did during the old welfare regime—particularly to the minority poor—some will not try to become self-sufficient. Experts couldn't calculate that simple dynamic, since fuzzy notions like values, norms, and culture are not easily quantifiable. The economists assumed that people were mere rational calculators, maximizers of self-interest, who would naturally try to be financially independent if the optimal incentives were in

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place. Moreover, used to drawing conclusions from small, experimental programs, they could not model the cultural effects of the large-scale policy shift that occurred in 1996.

The architects of TANF certainly relied on economic incentives, including the definitive one—no benefits after five years. But the bill's sticks and carrots added up to something greater than the sum of their parts. In a variety of ways—ending the federal welfare entitlement, forgoing the customary escape hatch of training programs in lieu of jobs—it was an unambiguous expression of a social consensus about work and self-reliance. The idea was not to get people to respond to particular inducements. It was much bigger than that: to try to get them to change their orientation toward life.

"When the culture sends mixed messages about self-sufficiency, some will not try to become self-sufficient."

The impact on the ground was unmistakable. Sharon Hays, the sociologist author of *Flat Broke with Children: Women in the Age of Welfare Reform* and no friend of TANF, describes a bureaucracy completely transformed by the new law. With the help of an influx of federal money and firm leadership, local offices spiffed up their waiting rooms, hung inspirational banners proclaiming PERSEVERANCE, SUCCESS, and DETERMINATION, and became job-search and -support centers. "Like caseworkers, almost all welfare recipients noticed the public enthusiasm for reform signaled by all the new programs, the influx of federal dollars, and the surge of media coverage that occurred in the first years after implementation," Hays writes. In other words, through TANF, the culture spoke, and poor women listened.

All of this might seem to lead to the conclusion that welfare reform has been a triumph for conservative thinking. That would be overstating things. TANF was never simply about ending welfare dependency. As part of a larger bill called the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), it was designed to improve the lives of the formerly dependent more broadly by nudging them toward middle-class life.

The Left always thought of moving up as a matter of money, not behavior: if people earned a middle-class income, they believed, middle-class conduct and aspiration would be sure to follow. Conservatives tend to see it the other way around: middle-class mores are necessary for economic success. If people adopt bourgeois habits and ambitions, they will work hard, save, and plan, and eventually have the money to make a down payment on a house or pay parochial school tuition. In the case of PRWORA, supporters took this idea a bridge too far. They imagined the work ethic as the engine that would carry all other virtues in its train. Jobs would bring discipline to the lives of poor single mothers and transform them and their children. Work would turn them into bourgeois strivers.

And you do hear stories that seem to support that theory. Take Jewel, one of the three protagonists of Jason DeParle's *American Dream*. After failing repeatedly, she finally got her GED after the book came out, and is now studying for a nursing degree, even while she holds down a full-time job. She is still with her boyfriend of ten years, and he, in turn, has kept straight in the six years since he was released from prison, working during most of that time. Though they haven't married, they are raising their son together, pooling their money, and behaving in most respects like a married couple—helping, as DeParle told me, to "stabilize and encourage each other."

But taken as a whole, you'd have to conclude that welfare reform has not been the extreme makeover that supporters had sought. And the reason is that it has barely touched

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the single-mother problem. Reform optimists predicted that by heightening women's self-respect and belief in their future, work would make them more marriage-minded. "Women, realizing welfare won't support them, may begin to make better choices: demanding more from the men in their lives, delaying childbirth, teaming up with breadwinners," journalist Mickey Kaus theorized. Reformers also hoped that work requirements would act as a deterrent: girls seeing their mothers and older sisters juggling a low-paying job, an apartment, and children, all without a husband's help, would shun such a life.

Moreover, PRWORA had provisions to attack the single-parent problem in a variety of ways, from cracking down on deadbeat dads to abstinence education, experimental marriage-education programs, and bonuses to states that brought down their out-of-wedlock birthrate. The act was supposed to have a clear message: children should be born to married parents who are responsible for raising them.

Perhaps without PRWORA, things would have been worse. After rising steeply for three decades, the increase in the rate of out-of-wedlock births did slow around 1994. Robert Rector of the Heritage Foundation points out that if the pre-reform trend line had continued, 42 percent of all babies would be born fatherless today; instead, the number is about 35 percent. "Something different happened in the 1990s that didn't happen in Europe," where illegitimacy rates continued their inexorable climb, he observes. Moreover, the marriage rate among black Americans was substantially higher in 1998 than the trend line from 1960 to 1990 would have predicted. The number of poor couples who were cohabiting at the time of their babies' birth also rose. Still, a slowdown in the spread of illegitimacy and more shacking up among poor men and women—a notoriously fickle domestic arrangement—are not what optimists had in mind.

Ending welfare dependency, then, is not likely to turn poor mothers and fathers into child-centered soccer parents. Though researchers haven't found that reform has had any adverse effect on children, they haven't found much positive impact, either. Jason DeParle's book and others that look at the lives of poor families after reform give a pretty good idea why. Just because a woman has to be at a job at 8 each morning doesn't mean that her child's father has become a paragon. For that matter, just because she's following the dictates of an alarm clock doesn't mean that she is envisioning a better life for her children.

In Adrien Nicole LeBlanc's *Random Family*, the boyfriend of one working ex–welfare mother minds her children while he bags crack cocaine in the kitchen. All three of the children of one of DeParle's protagonists, Angie, have quit high school. Her eldest son describes his aunt's boyfriend, a drug dealer, as his role model. As a teenager, her daughter began spending time with a family friend who happens to be a prostitute. When DeParle questions Angie about why she doesn't try to discourage the friendship, the mother of three huffs, "I'm not supposed to let my kids visit her 'cause that's her chosen profession? . . . You don't judge people about stuff like that!" Today Angie's daughter is 22, with no husband, two children, and a job as a checkout clerk. It's better than being on welfare, sure, but not much for the history books.

What reformers especially didn't factor into their marriage visions was that PRWORA, like so much of American social welfare policy, had little to say to the prospective husbands. While experts sometimes overstate the shortage of marriageable men, it is true that employment levels for men with a high school education have been declining since the 1980s. The situation is especially dire for blacks. At the same time that poor black single mothers were setting off to work in record numbers, the employment rates of their would-be husbands barely budged, despite the boom economy of the late 1990s and despite their rising education levels. (These numbers don't even take into account the 21 percent of non-college-educated young black men who are incarcerated.) By 2000, employment rates for black men were around 25 percent lower than for whites and Hispanics.

Put all of this together—low-income single mothers, idle (and sometimes imprisoned) men,

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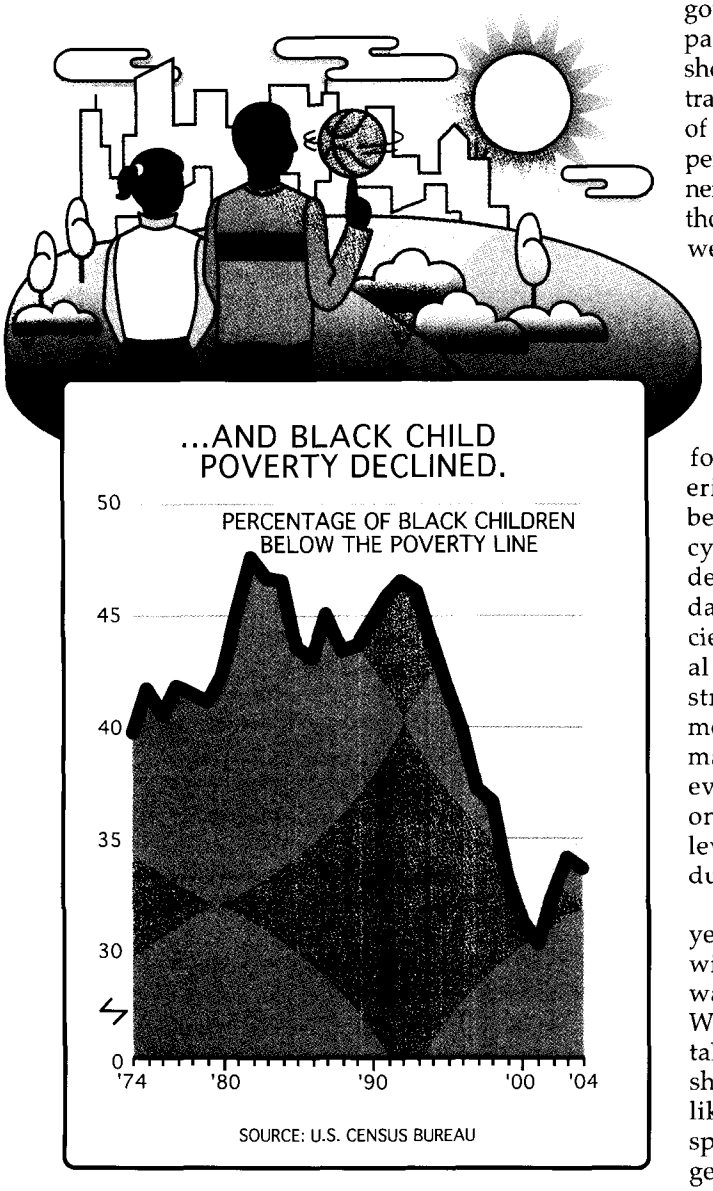

children with no vision of a way out (and no help from their schools on that score)—and you get a group only slightly different from the welfare families we had before: the struggling, working-single-mother family. So far, it seems better than its predecessor. Life in many inner-city neighborhoods has improved noticeably from its nadir in the late 1980s and early 1990s. Paul Jargowsky and Isabel Sawhill recently published a paper called "The Decline of the Underclass," showing a sharp decline in census "underclass tracts"—areas defined by their thick concentration of underclass behaviors, including welfare dependency, dropping out of school, and crime. If neighborhoods are improving, part of the reason, though it's impossible to calculate how much, is welfare reform. But at least as big a reason is that many of the most dangerous people have been sent away, so crime has gone down.

So what do policymakers do next? First, TANF, which Congress has just reauthorized for five years only—after several years of dickering over child care and work rules—needs to become a permanent fixture of American policy. The Left will always use reauthorization debates as a stage to push for more funding for day care and a higher minimum wage—policies that do nothing to change the fragile cultural landscape in which the single-mother family struggles. To make that transformation, more men have to become attached to work and to marriage, rather than to crime or prison. However, unlike with women who were dependent on welfare checks, policymakers have fewer levers to change the culture of unskilled, uneducated men.

As for the revival of wedlock, aside from as yet unproven marriage education programs that will reach only a small number of people anyway, social policy can play only a limited role. What's needed instead is a blitz of marriage talk from the churches, from the black leadership, from the political class, from celebrities like Bill Cosby, from radio and television spots—from anyone and everyone who might get the ear of the welfare population. This campaign will not lead poor mothers and their boyfriends to surge into wedding chapels; most never planned to raise children together, and they have pretty dismal long-term prospects. Rather, the marriage blitz needs to speak to a new generation of young people still able to rethink the possible outlines of their lives.

Policy has given the culture a nudge, but now the culture has to change itself.

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Making Civil Justice Sane

Judges should stop unreasonable lawsuits before they start.

Philip K. Howard

In many ways, the tort reform movement has succeeded. Over half the states have damage limits, kangaroo courts no longer exist in Mississippi and Texas, and, thanks to the class action reform that Congress passed last year, some obscure county court can no longer bankrupt entire industries. Supreme Court rulings have limited punitive damages and charged federal judges to guard against "junk science" by dubious experts.

But a lawsuit culture still corrodes daily relations throughout society. Doctors practice defensive medicine to ward off patient lawsuits and hesitate to intercede against inept colleagues, fearful of years of litigation. Businesses won't give job references. Teachers have lost control of the classroom—78 percent of middle and high school teachers surveyed recently reported that students had threatened them with lawsuits for violating their rights. Distrust of justice may be at a new low: only 16 percent of Americans said that they would trust the justice system if someone brought a baseless claim against them.

Hardest hit are activities that are optional. Fun, for example, is fraught with fear. Schools ban dodgeball and tag. Jungle gyms, diving boards, and seesaws seem relics of some past civilization. Meanwhile our children, rescued from the risks of roughhousing and accident, suffer from the far greater risk of obesity, now at epidemic proportions.

The direct costs of this approach to justice are large (about twice the percentage of the GDP than in other developed nations). But the indirect costs are debilitating, infecting daily dealings with distrust and defensiveness. What's at stake is the functioning of society.

Last summer, Lord Hoffmann, a judge on Great Britain's highest court, noted that the U.K. was the dream of every U.S. tort reformer—no punitive damages, limits on pain and suffering, no contingency fees, loser pays, no juries in most civil cases, and a trial bar with almost no political influence. Yet, he remarked, England increasingly suffered from the pathologies of what the British call the "compensation culture." The problem, he argued, was that judges had come to view litigation merely as a way of resolving private disputes and no longer appreciated that the proliferation of lawsuits affects the behavior of everyone in society. If judges don't act as gatekeepers, drawing the boundaries of claims on behalf of broader society, then the mere possibility of a lawsuit will end up "diverting resources from activities where they are most needed and . . . restricting the liberty of individuals to enjoy their lives in their own way."

Lord Hoffmann put his finger on what's missing in American justice: judges don't exercise their discretion to protect against abusive or unreasonable claims. The goal of civil justice is not merely to provide a forum to resolve disputes but to provide legal guideposts defining right and wrong. Law is the foundation of freedom in part because people know where they stand—they have confidence that our system of law will enforce contracts and require someone who's negligent to compensate the person injured. Law is supposed to protect the good as well as condemn the bad. Citizens in a free society should be confident that courts will affirmatively defend them if they act reasonably.

Today America's civil justice system is not providing these guideposts of right and wrong.

Illustrations by Arnold Roth

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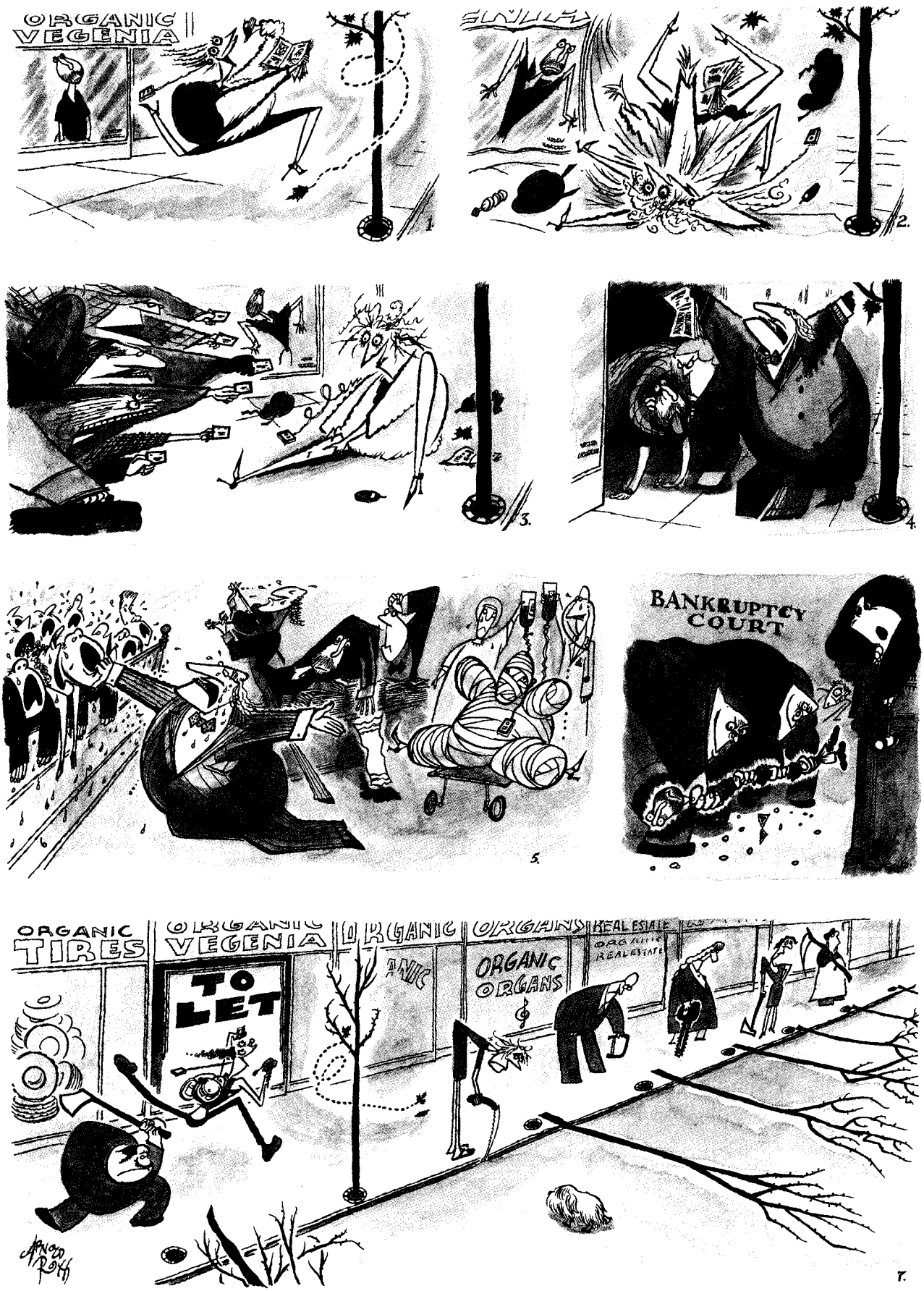

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People believe, on the whole accurately, that any aggrieved person can haul another into court over an accident or disagreement and put his claim, in almost any amount, before a jury. Because one jury can't bind the next, civil justice has become an ad hoc process, without meaningful guidelines or limits.

Restoring freedom in social interaction requires a basic shift in the goals of civil justice. Judges must see their role not as referees of a neutral dispute-resolution system but as guardians of reasonable choices, constantly making rulings that draw the boundaries of reasonable dispute.

An important decision by the Law Lords began pushing Britain back in this direction in 2003. The case at issue could have come from many courts in America. On a hot day in Cheshire, an 18-year-old named John Tomlinson went for a swim in the lake of a local park. Racing into the water, he dived too sharply and broke his neck on the sandy bottom. He was paralyzed for life.

Tomlinson sued the Cheshire County Council for not doing more to protect against the accident. The Council, he discovered, knew about the risk. Three or four near-drownings occurred every year. NO SWIMMING signs had been posted—and widely ignored—for over a decade. The popularity of the park, with over 160,000 visitors a year, made effective policing almost impossible. Fearful of liability, the Cheshire Council had decided to close off the lake by dumping mud on the beaches and planting reeds. But before the reeds were planted, Tomlinson had his accident. The Council should have acted sooner, his lawyer argued, to prevent "luring people into a deathtrap" and to protect against a "siren call strong enough to turn stout men's minds." Because the county obviously knew the danger, the lower court accepted this argument.

The Law Lords took the appeal and ordered the case dismissed. The lead opinion by Lord Hoffmann declared that whether a claim should be allowed hinged not just on whether an accident is foreseeable but "also the social value of the activity which gives rise to the risk." Permitting Tomlinson's claim, the Law Lords held, means that hundreds of thousands could no longer enjoy the park: "[T]here is an important question of freedom at stake. It is unjust that the harmless recreation of responsible parents and children with buckets and spades on the beaches should be prohibited in order to comply with what is thought to be a legal duty."

The county's ineffective effort to prevent swimming, instead of establishing negligence, the Lords held, demonstrated how a misguided conception of justice hurts the public. "Does the law require that all trees be cut down," Lord Hobhouse asked, "because some youths may climb them and fall?" Lord Scott added, "Of course there is some risk of accidents. . . . But that is no reason for imposing a grey and dull safety regime on everyone."

The *Tomlinson* decision highlights the forgotten goal in American justice. Judges have forgotten that lawsuits concern not only the parties to the dispute but everyone in society. The mere possibility of a lawsuit changes people's behavior. That's why judges must draw boundaries as a matter of law.

Today in America, such a solution would be practically unthinkable. We look to the jury as our guarantee of fairness and see judges as mere neutral referees. The phrase "the right to sue" has magical powers—and the jury is an essential ingredient of that right. All the trial lawyers need to do is pound the table—"they're trying to take away your right to sue"—and instantaneously reformers are on the defensive, muttering about the need to curb frivolous cases.

Access to courts is indeed a core value: even a frivolous claim requires someone with authority to decide that it's frivolous. But the "right to sue" has come to mean not just getting inside the courthouse door but going all the way to the jury as the ultimate decision maker. Any other conception of justice, the trial lawyers tell us, would mean that the system is rigged. As leading trial lawyer Richard Scruggs put it: "I trust the jury system and I trust the American people

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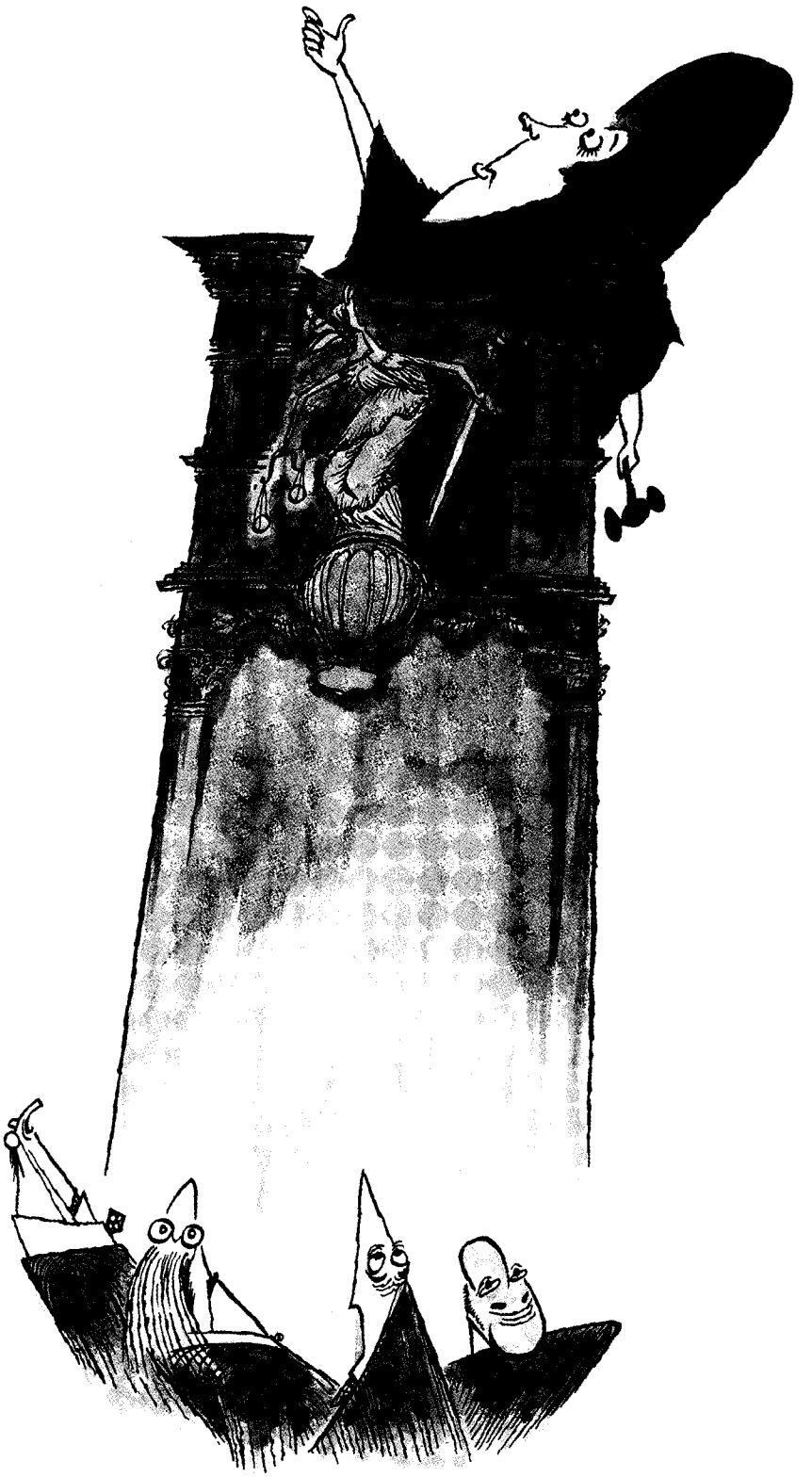

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and their common sense far more than the National Association of Manufacturers to protect the American public."

The populist appeal of juries is easy to understand. The idea of the jury—a randomly picked group of citizens—seems like the model of American fairness. Former senator John Edwards, who made millions suing hospitals in the South, summarized the prevailing sentiment toward juries in a *Newsweek* essay, "Juries: 'Democracy in Action.'" Its gist: freedom's flag waves in the breeze, as jurors, summoned from all walks of life, come to do their civic duty. The vision is so powerful that we don't look back to consider what the role of the jury is supposed to be.

But is civil justice supposed to be a kind of mini-election, where 12 (or six) voters decide, case by case, what's right and wrong? "The basic moral principle, acknowledged by every legal system we know anything about," Yale law professor Eugene Rostow once observed, "is that similar cases should be decided alike." The rule of law—the very *idea* of the rule of law—is that it is supposed to set and apply standards of conduct evenly.

It is impossible to reconcile these two ideas. Under the "democracy in action" conception, each jury decides a case as it sees fit, whatever the verdict in similar prior cases. This model not only tolerates but encourages decisions that vary wildly from case to case. Fairness is defined largely by the neutrality of a randomly picked group of jurors, not consistency among similar cases.

If fairness were the only issue in a particular case, why *not* let the jury make the choice? Somebody has to decide. But litigation, as Lord Hoffmann observed, affects people not in the courtroom. Derek Bok, Harvard's former law school dean and its once and future president, observed that lawsuits "often have their greatest effect on people who are neither parties to the litigation nor even aware that it is going on." The news last year that someone received a large verdict in a sledding accident had the natural effect of causing other towns to bar winter sports from town property. No legislature or judge, however, made a decision that sledding is an unreasonable risk. Who represents the interests of the citizens who want to enjoy winter sports? One jury decides that an activity is safe; the next jury decides that it is not. What is a prudent person supposed to do?

The rule-of-law model, by contrast, aspires to guidance and predictability, to fairness to society as a whole, not just to the individual parties. Its main tools are statutes by legislatures and written rulings by judges. By setting boundaries that people can rely upon, the rule of law promotes the freedom to interact honestly and take reasonable risks.

But doesn't the Constitution require juries to make such decisions? The answer is a qualified no. If the case turns on a question of law, rather than a question of fact, then the judge should make the final decision. In our constitutional framework, juries have the job of deciding disputed facts—who is telling the truth, say, or who ran the red light. But juries are not supposed to interpret the law—that's the judge's job. Many cases turn not on factual disputes but, as in the *Tomlinson* case, on whether the conduct at issue was reasonable. This allocation of responsibility between judge and jury has distinguished Anglo-American jurisprudence for centuries. To quote the landmark Jacobean common law treatise by Sir Edward Coke: "Judges do not answer questions of fact . . . [and] jurors do not answer questions of law."

The Seventh Amendment, though hardly a model of clarity, defines the jury right by incorporating common law practice, and it explicitly invokes the fact-law distinction: "In suits at common law . . . the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined . . . than according to the rules of the common law." In the debates over ratification of the Constitution, future chief justice John Marshall stated categorically: "What is the object of a jury trial? To inform the Court of the facts."

Popular confusion over the jury's role probably stems from the distinction between civil and criminal cases. Under the Sixth Amendment,

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only a jury has the power to convict. Juries in a criminal case are our protection against abuses of state power. But a private lawsuit, we seem to have forgotten, is a use of state power against another private citizen. Filing a lawsuit is just like indicting someone—it's just an indictment for money. Without the protection of a disinterested prosecutor and a grand jury, the defendant needs the protection of the judge to decide whether the claim has legal merit, leaving the jury to decide disputed facts.

The use of a jury in a particular civil lawsuit should depend on whether the case hinges on a factual dispute—who's telling the truth, for instance. But in other cases, the judge should decide. If the claim implicates the functioning of society—say, a claim that a seesaw or jungle gym is unreasonably risky—juries can resolve specific factual disputes (using what are known as special interrogatories), but the judge should then rule as a matter of law whether the activity constitutes an unreasonable risk.

"The very idea of the rule of law is that it is supposed to set and apply standards of conduct evenly."

Cases that turn on acceptable standards of medical care almost always have broader social ramifications—for example, whether it's appropriate for a doctor to prescribe aspirin for a bad headache and then to wait and see how the patient progresses. Once in a while, that headache will be a tumor. Is the doctor liable for not immediately ordering a battery of tests? If so, then doctors will continue to squander billions on unnecessary procedures, driving up costs and thereby causing others to go without care altogether. To avoid this result, the legal system must draw boundaries of reasonable risk. Doctors need to know what's expected of them.

Prominent trial lawyers whom I debate typically argue that the jury system is our best form of regulation. But in that case, where does the doctor go to find the rule? It doesn't exist, because the "regulation" varies from jury to jury. That's why Oliver Wendell Holmes, Jr., perhaps our most eminent common law thinker, believed that what constitutes reasonable conduct was a question requiring a ruling of law: "Negligence . . . [is] a standard of conduct, a standard which we hold the parties bound to know beforehand . . . not a matter dependent upon the whim of the particular jury or the eloquence of the particular advocate."

California Supreme Court chief justice Roger Traynor, a liberal innovator, emphasized the need for judges to declare rulings even in the simplest accident and not to leave standards of reasonableness to the "oscillating verdict of juries." When a woman hit her head on a slanting ceiling while walking down a staircase, Traynor insisted that the judge determine whether the ceiling was an unreasonable hazard or whether "the danger is so apparent that visitors could reasonably be expected to notice it."

In commercial law, where the focus is predictability and efficiency, it is a well-established principle that judges, not juries, have the obligation to interpret the standard language of contracts. The Uniform Commercial Code was a legislative effort to achieve consistency. Its core concepts—including ones that look very much like those of tort, such as reasonableness—are often decided as a matter of law. America's system of commercial law, generally considered the most consistent and predictable in the world, is a bedrock of America's economic strength.

Just imagine the mischief if parties to a commercial deal could make up theories about the unfairness of a particular contract. That's what's happened in social relations in America.

The rights that our founders gave us were rights against state power. The modern conception of the "right to sue" allows a claimant, more

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or less at his whim, to threaten you with state power. The jury may uphold your conduct, or it may not. But there's no one on behalf of broader society who sees it as his job to keep claims within knowable bounds. This is not the rule of law, with predictable standards and guidelines, but something closer to the opposite.

Judges today give lip service to the distinction between fact and law, but, as one scholar put it, there's "a strong tendency to let all issues go to the jury without discriminating among them." Letting the jury decide is easy—it "reduces judicial effort and the risk of reversal." Prior to the 1960s, judges didn't need to keep tight reins on hot-coffee claims or multimillion-dollar personal-injury lawsuits. There weren't any. People didn't have the idea that they could use litigation as a lottery.

In the 1960s, legal theorists reconceived civil justice as a neutral process, telling judges that their first duty was to avoid asserting judicial values. Who knows what bias lurks in the heart of the judge? Appellate courts admonished judges not to dismiss any claim unless "it appears beyond doubt that the plaintiff can prove no set of facts in his support of his claim which would entitle him to recover." The standard is almost like that required for a criminal conviction: judges won't dismiss a claim (or, for that matter, a bogus defense) unless there is virtually no room for argument. Since most accident cases involve interpreting standards of conduct in factual circumstances—what are known as mixed questions of law and fact—judges believe that their main job is to read legal instructions to the jury, and leave it to the jury to apply the law in each case instead of applying it themselves.

The effect was not to achieve the ostensible goal of neutrality, however, but to leave a vacuum that has been filled by an ever-broadening range of private legal claims and threats. Lawyers began pushing the envelope, and they haven't stopped.

Like the rest of us, judges have witnessed this vast expansion of legal exposure, and many don't like it. But they feel powerless to do anything about it. Making a legal ruling based on broader social effects of a lawsuit—say, whether seesaws are a reasonable risk—is inconceivable to most judges. A few years ago, when debating the judge in the McDonald's hot-coffee case, I suggested that the reasonableness of selling hot coffee from a takeout window should be decided as a matter of law. His response perfectly captured current judicial orthodoxy: "Who am I to judge?"

But what about judicial activism? In this same period, judges around America were taking control of schools and prisons and causing riots when they ordered children bussed to different neighborhoods. Judges felt just fine making rulings as a matter of law that effectively preempted the legislature. How can we come to terms with this Jekyll and Hyde performance?

The common thread is a judicial preoccupation with the plight of the individual, coupled with a distrust of business, professionals, and democracy itself. The jurisprudence of our era is not, in fact, based on a principle of neutrality but on an active antagonism to the establishment. Someone feels aggrieved? Let him sue for the moon. The Kansas City school board isn't doing a good job educating the students? Let the court take over the schools. Courts in the 1960s embraced a judicial philosophy of championing anyone claiming victimhood.

What judges forgot in their preoccupation with fairness to the particular claimant is that the impact of lawsuits goes beyond the particular verdict and affects society as a whole. An overly activist judicial approach to social issues preempts the legislature and distorts public priorities in areas not even considered by the judge. A passive judicial approach to private lawsuits, leaving most decisions to the jury, creates an open season for anyone who wants to use state power to threaten another person. Social policy in these areas ends up being made by lawyers like Dickie Scruggs and whoever else comes up with a theory of liability.

Rulings by the Supreme Court in the past ten years suggest that it is pushing judges in the

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same direction as the British Law Lords. The Court has repeatedly instructed judges to assert their power in a wide variety of civil cases, with the goal of restoring legal consistency.

Several important decisions exhort judges to use summary judgment to make rulings as a matter of law. In *Celotex* v. *Catrett*, a wrongful-death asbestos case, the Court starkly shifted direction from the presumption that judges should avoid summary dismissal if there is a "scintilla of evidence": "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of . . . rules . . . designed 'to secure the just, speedy and inexpensive determination of every action.'"

Justice Souter, in *Markman* v. *Westview Instruments*, explained the importance of judges making rulings of law to achieve consistency in patent cases. A legal system that creates a "zone of uncertainty," Souter cautioned, "would discourage invention."

In *Cooper* v. *Leatherman*, the Court held that judges should decide the upper limits of punitive damages as a matter of law. "Requiring the application of law, rather than a decisionmaker's caprice, does more than simply provide citizens notice of what actions may subject them to punishment; it also helps to assure the uniform general treatment of similarly situated persons that is the essence of law itself," the Court declared, quoting an earlier opinion of Justice Breyer. Going still further, in *State Farm* v. *Campbell*, the Court itself took responsibility for mandating a limit on claims for punitive damages, to bar plaintiffs from making outlandish claims to extort settlements. "Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose," Justice Kennedy wrote for the Court.

In *Daubert* v. *Merrell Dow*, the Court shifted the responsibility of what constitutes credible expert testimony from jury to judge. On the authority of *Daubert*, a federal judge in Texas, Janis Jack, recently took it upon herself to investigate the validity of more than 9,000 silicosis claims. She found that the diagnoses were a sham and that the litigation had basically been mass-produced by lawyers who would advertise for potential plaintiffs, invite them to a mobile X-ray truck, and then pay doctors to sign their names on preprinted diagnoses. What was shocking about Judge Jack's 250-page opinion was not the details of this scheme—anyone associated with asbestos litigation has seen the scam in action for years—but that a judge actually took the authority to declare that the emperor had no clothes. Until her decision, judges overseeing several hundred thousand cases had basically taken the position that the plaintiffs had the right to submit these bogus claims to the jury.

Of course, legislatures, not judges, have the ultimate authority for drawing the boundaries of law in our society. So far, though, Congress and the statehouses have treated civil justice as a fight between special interests. Even when passing specific tort reforms, they have ducked responsibility for sorting out the underlying systemic flaws. While legislators cannot crowd into the courtroom to make rulings of reasonableness in a particular case, they can certainly direct judges to take that responsibility, and they can provide appropriate goals and guidelines. Judges need such help: after four decades of letting trial lawyers argue almost anything, they have no idea how to draw the required legal boundaries.

Legislators should pass laws giving judges the responsibility to safeguard our freedom to act reasonably. In November 2005, the House of Lords introduced a bill on civil liability that, among other changes, would make the *Tomlinson* ruling law, granting broad authority to judges to consider whether allowing a claim might "discourage persons from undertaking . . . a desirable activity." Congress and individual states could enact a similar bill directing judges to act as gatekeepers of the reasonableness of claims, perhaps along these lines: "Judges shall take the responsibility to draw the boundaries of reasonable dispute as a matter of law, applying common law principles and statutory guidelines. In making these rulings, judges shall consider whether allowing a claim or defense to proceed to the jury,

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and the exposure of others in society to similar claims, might undermine the ability of citizens to engage in reasonable or productive activities."

Congress has before it a number of bills that would accomplish this result in specific areas. In the wake of Hurricane Katrina, for example, Senator John Cornyn (R, TX) introduced a bill to shore up the toothless Volunteer Protection Act by giving judges the responsibility to decide as a matter of law whether claims fall within the scope of the act. Arkansas governor Mike Huckabee, concerned about the chilling of children's recreation and the crisis of obesity, is considering proposals shifting responsibility to judges to decide whether a particular activity is unreasonably risky.

"Legislators should pass laws giving judges the responsibility to safeguard our freedom to act reasonably."

Some areas of society are too far gone. Health care is in such disarray, and involves such complexity, that a broad coalition, including patient advocates, has endorsed the idea of a new system of health courts. Although the idea of an expert court may seem radical, America has a long tradition of special courts in areas needing specific expertise—admiralty courts, tax courts, drug courts, bankruptcy courts, and administrative tribunals in areas ranging from workers' compensation to vaccine liability. In the Senate, Michael Enzi (R, WY) and Max Baucus (D, MT) have introduced a bipartisan bill to authorize and fund pilot health courts, with hearings planned later this term.

Restoring reliability to civil justice is a radical idea, but that just shows how far we've fallen. Why are there frivolous and extortive cases? Because judges don't think they have the authority to decide what's frivolous. Why are daily choices riddled with legal fear? Because judges won't draw the boundaries of reasonableness.

Probably the hardest part for judges will be the idea that they have an important role as protectors of society's values. They must understand that if a claim will affect the conduct of people not in the courtroom, they have the duty to assert the reasonable values of society. The hardest part of this reform for the rest of us, in this age of distrust, is that we don't trust judges. And almost certainly judges will make a certain number of bad rulings. But at least the rulings will be in writing for all to see and can be appealed and, if really stupid, overturned by the legislature. But having no rulings—letting unreasonable claims go to the jury—is like having a perfect record of bad rulings. Most people will act as if they might be liable. Why take the risk?

The opponents of such a reform are not hard to identify. The American Bar Association recently passed a broad resolution condemning special health courts, even pilot projects, declaring that "it is against ABA policy related to juries." Other factors may influence their position as well. More than 60 percent of the total cost of the malpractice system is consumed by lawyers' fees and administrative costs. The lawyers portray themselves as a kind of Robin Hood for injured patients, but the modern twist is that they keep most of the money. This trial-lawyer wealth comes in handy politically and, indeed, has become an opiate to one of our political parties.

The lawyers' most powerful weapon, however, is their rhetoric. No one wants to give up the "right to sue." What the public needs to understand is that the right to sue has no substance without the rule of law. Rights without law do not protect freedom but undermine it—causing disorder in schools, contributing to unaffordable health care, and putting a pall over life's simple pleasures. Let the lawyers, increasingly isolated by their self-interest, talk about the right to sue. We should talk about the rule of law and how it should support the functioning of a free society.

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Toxic Regulation

Inflexible regulators stifle innovation and kill small businesses.

David Schoenbrod

On a sunny summer afternoon eight years ago, Dan Wilson and Susan Knapp exchanged wedding vows on a hilltop in their upstate New York apple orchard. In the apple barn down through the trees, we toasted them with their own cider. We drank up, despite knowing that the Food and Drug Administration had proposed making it a crime for them to sell it.

The FDA had said that the unpasteurized juice of apples is dangerous because of the possible presence of *E. Coli* bacteria. That is not quite true, as many in the wedding company could explain. We also knew that Dan and Susan were worrying that an FDA mandate to pasteurize would turn this orchard upon which Dan was reared into a losing proposition. A few nights before the wedding, sitting at our kitchen table, he said, "I can imagine the day when my closest relation to growing apples will be buying them in the supermarket." Susan nodded. That would be a tragedy: they are a focus of our rural society. Their quitting farming would leave a hole bigger than a barn.

The pall that the FDA cast on their wedding was but one scene in an apple cider saga that changed how I think about regulation. As a Natural Resources Defense Council litigator in the 1970s, I had focused on getting the federal agencies to protect public health. The complaints about the difficulties of compliance mattered to me chiefly as an obstacle to that goal. I still want health protected, but, as a friend of Dan and Susan, I learned that regulation, even when well-intentioned, sometimes quite unnecessarily discourages initiative and creativity.

The FDA had gotten involved with cider two years before the wedding, when an infant in California had died because of *E. Coli* contamination in bottled fruit juice. The juice had come from Odwalla, at that time a large West Coast company, but the FDA began to consider regulating all producers of fruit juices, down to small cider makers such as Dan and Susan.

E. Coli can get into cider because deer and mice, which are among its carriers, have a taste for apples. One response is to pasteurize the juice, which also brings the commercial benefit of longer shelf life. Odwalla, however, had taken pride in not pasteurizing; it advertised its

CLIFFORD OLIVER

Susan Knapp and Dan Wilson prune their orchard.

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products as tasting better because they were only minimally processed. After the *E. Coli* outbreak, it installed equipment that pasteurizes by heating and cooling the juice in such a flash that the taste is not much affected.

The Apple Processors Association, dominated by large companies, urged the FDA to require that all juice be pasteurized. That would have been ruinous for small cider producers. At that time, equipment that pasteurizes in a flash cost upward of $70,000. Even budget pasteurizers cost $25,000, but they are prone to cook the taste out of cider and require extra employees to operate. Cider that tasted like canned apple juice, plus higher operating costs, spelled bankruptcy to Dan and Susan. Not so for the members of the Apple Processors Association. They already pasteurized, and stood to pick up the sales of the small producers driven out of business.

In any event, the FDA proposed to decree that juice be put through a sanitizing process that would cut bacteria levels at least 100,000-fold. Culling the apples and then washing them would probably have accomplished that, but the rule required that the cut take place in one step. The only way to do that was pasteurization. While still pondering this proposal, the FDA promulgated another rule that the Apple Processors Association wanted. Any unpasteurized juice must carry a label with this chilling warning: THIS PRODUCT HAS NOT BEEN PASTEURIZED AND, THEREFORE, MAY CONTAIN HARMFUL BACTERIA WHICH CAN CAUSE SERIOUS ILLNESS IN CHILDREN, THE ELDERLY, AND PERSONS WITH WEAKENED IMMUNE SYSTEMS. This was three days before Dan and Susan's wedding.

Many customers at their cider barn threatened to stop buying their cider if it were pasteurized. They liked its fresh taste and were unconcerned about *E. Coli*, their forebears having drunk cider from this orchard for a century without apparent incident. (So, too, do Europeans like the taste of real Brie, Camembert, and other young cheeses made from unpasteurized milk. They accept the small risk from *E. Coli* and other pathogens—a risk that has prompted the FDA to allow only ersatz versions into the United States.) By contrast, the scary label would have spooked consumers who bought the cider at a few supermarkets in a nearby city; these stores stopped carrying Dan and Susan's cider.

Going to the annual meeting of the New York State orchard owners the following winter, Dan was dejected, but he met someone there who cheered him up. Phillip Hartman, a 52-year-old engineer, was displaying the prototype of a machine that he claimed would sanitize cider without hurting the taste, yet could be sold for $12,000 and would require no extra employees to operate. That was his hope—but only a hope. He had neither approval from the FDA nor even a company to build the machines. Phil, whose full-time job was in the computer industry, had been trying to help a fellow employee, with a friend in the same pickle as Dan and Susan, figure out how to use ultraviolet light to sanitize cider. The problem was that, though ultraviolet can sanitize water, the cloudiness of cider prevents the light from penetrating deeply enough. Phil, whose engineering specialty is creating the thin films on computer wafer board, hit upon a way to make the cider run by the light source in a film so thin, 30/1000 of an inch, that the ultraviolet would sanitize every drop.

By the fall of 1997, Phil had an ultraviolet device ready for bench testing, but he needed a biologist to confirm that it killed the *E. Coli*. Randy Worobo, who had just joined the faculty of Cornell University's Agricultural Experimental Station, agreed to help. His test found that the device did cut the bacteria 100,000-fold, as required. Phil elaborated this device into the prototype that he brought to the orchard owners' annual meeting.

Although Phil still had many hurdles to overcome, the orchard owners got the sense that, as Dan put it, "this guy would do everything he could to make things right." The opinion that counted most was that of Russell French, a distributor of orchard equipment, who agreed to do the selling. He was running a risk. If Hartman's machines failed to work, or if the FDA refused to sanction them, French would alienate his customers and might even face lawsuits

COURTESY OF PHIL HARTMAN

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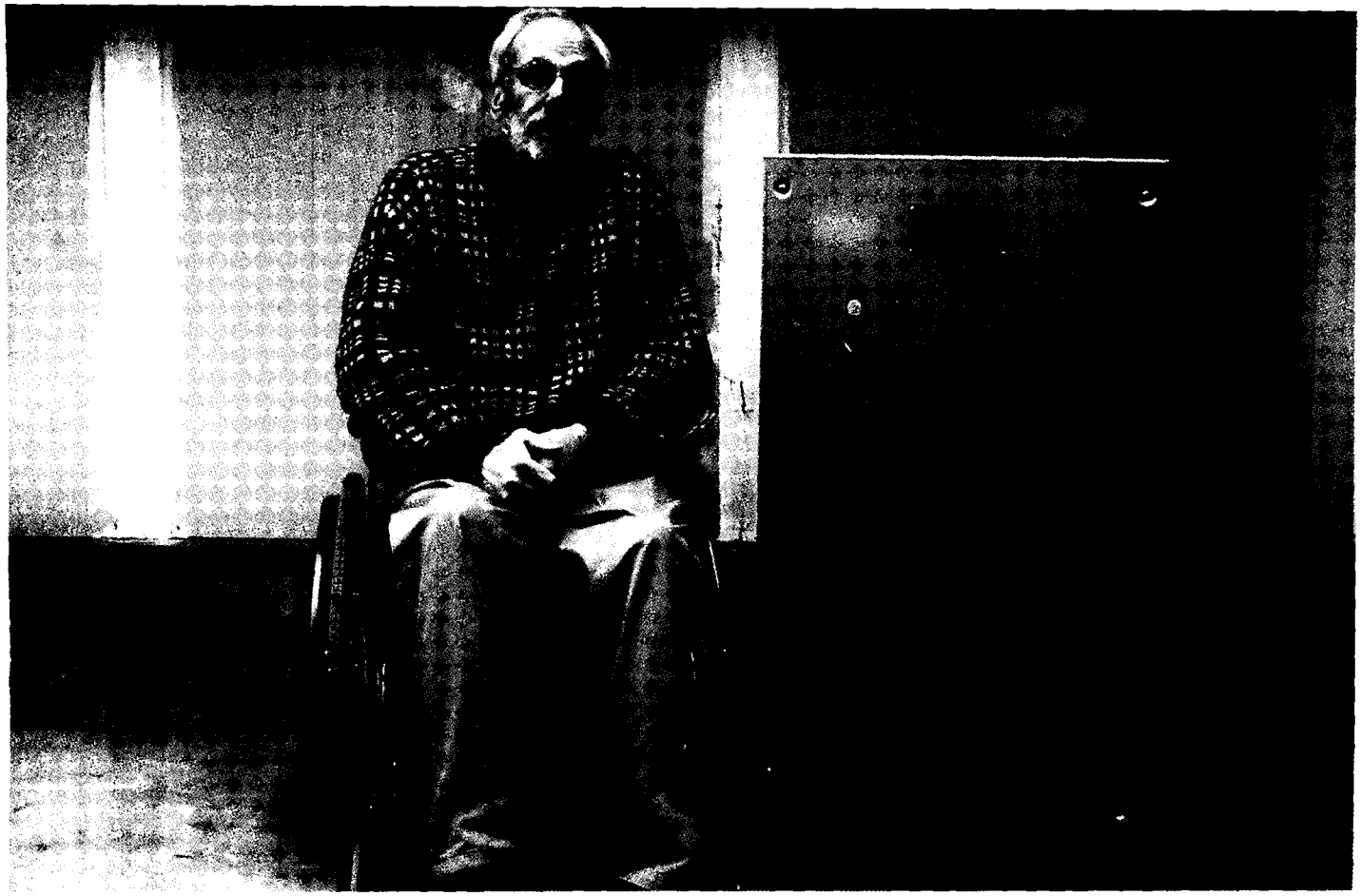

The FDA resisted Phil Hartman's ingenious sterilizing machine, . . .

from people who got sick after drinking cider. Encouraged, Phil quit his job and set up a company to make cider-sanitizing machines.

Dan and Susan placed one of the first orders, linking their future to Phil's ability to deliver machines that satisfied the FDA. Their machine arrived in time for the 1999 cider season, but the early equipment had glitches. Phil would get phone calls from orchard owners desperate because a balky machine stood between a barn full of perishable apples and customers with cash. Phil would respond by getting into his van and driving through the night from his home in western New York to orchards as far away as Vermont, Virginia, or Michigan. Driving was his only option: a paraplegic since his teens, he could not negotiate an airport with his wheelchair, tools, and spare parts.

Taking the glitches out of the machines proved easier than winning regulatory approval. One hurdle was the FDA's rule requiring that cider be either pasteurized or labeled as dangerous. Phil's machines, even though they did reduce *E. Coli* by 100,000-fold and in one step, did not pasteurize, and the FDA had not decided whether their use permitted cider makers to omit the drink-this-at-your-own-peril label.

While the FDA dithered, cider makers across the country bought pasteurizers or went out of business, because they feared taking a chance on Phil Hartman's machine. Not in New York State, however. In the words of its chief food-safety regulator, Joseph Corby, "We told the cider producers, 'We license you and we approve Hartman's machine. The FDA has no reasonable basis to withhold its approval, and, if it does, there will be a battle.' As a result, we got a lot of nasty calls from pasteurizer manufacturers." It was not until late 2001 that the FDA decided that cider made with Phil's machine did not have to carry the warning label.

Corby's solicitude for New York cider makers saved dozens of them from going under. From 1997 to 2000, while the FDA rules were driving producers out of business elsewhere, New York's cider producers multiplied. By

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contrast, in Vermont, just a few miles away from Dan and Susan's orchard, fully 60 percent of the cider producers ceased operation during the same period. Overall, in states like New York, which supported sanitizing by ultraviolet, the number of producers stayed steady; in states that left their producers to the FDA, the number of producers declined 38 percent.

Phil ran into another, more ominous FDA problem. The agency had long had a rule limiting the exposure of food to ultraviolet light, not because it had evidence that it was dangerous but because it lacked definitive evidence to the contrary. It had put an exception into that rule for a company whose machine used higher levels of ultraviolet than did Phil's for sanitizing the surface of fatty foods like potato chips, but the exception did not cover the use of ultraviolet on fruit juice. FDA officials told Phil to emulate that company's successful application, and he would get his exception. He did as told, but a year later the FDA wrote that his application could not be considered without more information. And then, alarmingly, it warned that, until he got an exception, the FDA would enforce its anti-ultraviolet rule by shutting down any cider maker using his machines. His customers—including Dan and Susan, now his friends—would be out of business.

Phil decided that he needed a lawyer quick and found one who had worked for the FDA. He took the $10,000 retainer out of his savings. The lawyer filed a new application for an exception to the ultraviolet rule. The FDA eventually summoned Phil to a meeting at its Washington, D.C. headquarters, where an official read him a prepared statement that his new application was faulty. Officials told him, however, that the bottler that made Naked Juice, at that time a major West Coast brand like Odwalla, had filed its own application to use ultraviolet on fruit juice. The officials advised Phil not to apply again, because that would delay Naked Juice getting an exception—and that exception would cover him.

The FDA later did approve the Naked Juice application, but in a way that didn't legalize Dan and Susan's machine. While Phil had elegantly solved the problem of getting ultraviolet to penetrate cloudy cider by running it past the light in an ultra-thin, smooth stream, Naked Juice had done so with brute force—by applying a much larger dose of ultraviolet to a thick stream. Critical to the functioning of the Naked Juice machines was that the stream be turbulent, to bring all the cider close to the ultraviolet light at some point. Both kinds of machine cleaned the cider, but the exception that the FDA granted to Naked Juice required cider-sanitizing machines to have a turbulent flow. The effect was to outlaw the machine that Phil had sold Dan and Susan, even though it was just as good at sanitizing the cider and, because of its superior design, used far less of the ultraviolet that the FDA had viewed as risky.

Fortunately, Phil had a way of altering his machines to meet the FDA's turbulent-flow proviso, and he drove hither and yon to retrofit them. He remained bothered, however, by the FDA's action. The agency put him through the wringer, on the theory that ultraviolet might be dangerous, but in the end it put no limit on ultraviolet exposure. It required a particular technique (turbulent flow) rather than a good outcome (safe cider), thereby limiting the ways in which he might use his expertise in thin-film technology to produce a still-better machine. The FDA's procedural rules did, however, offer him recourse: to file a formal objection. That he did, with Cornell biologist Randy Worobo's help. It was lucid and well documented. The FDA never responded.

Phil is still making his machines, with the help of his niece and three other young, part-time employees on rented floor space in someone else's factory. His office is in his home. Now that he's sold 120 machines, the market is close to saturated. He does not know what he will do next, but when he quit his job to start this business, he knew that his income would be lower and less secure. Is he glad that he did it? "Oh hell yes. I have enjoyed myself immensely. I enjoy the cider makers. I enjoy the traveling. I enjoy the young people." He has since taken up scuba diving, with the help of his niece.

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Phil could not have succeeded without Worobo, who diverted time from conventional academic work and made enemies potentially dangerous to a then-untenured professor. As he recalls, "On Good Friday in 1999, two salesmen from a pasteurizing-machine company came into my office and screamed and hollered at me for four hours. They said they didn't like competing with Cornell." Why did he do it—and for free? "Phil Hartman is a brilliant engineer, and I enjoy working with him. I also feel compassion for the cider makers. I am from a farming background myself. I know what it was like when my parents got screwed." On account of Phil's success, Dan and Susan can still make cider.

"As Smith and Hayek taught, the world is too complicated for officials to know what will work best."

Dan and Susan never had any quarrel with the FDA's aim of reducing exposure to *E. Coli*. Before the agency stepped in, they culled the fruit to get rid of any that was nibbled or damaged and washed it before putting it into the press. Parents do no more in feeding apples they pick to their children. The FDA itself now finds such techniques an acceptable alternative to pasteurization for orange juice. Apples are different from oranges, and Dan and Susan are glad to have purchased Phil's machine. It gives them peace of mind.

The FDA could, however, have protected us to the same degree—a 100,000-fold reduction in *E. Coli* in apple cider—but with less harm to those regulated, if it had not long insisted that this reduction had to be achieved through pasteurization, had not required that the reduction be done in one step, and had not decreed that there was only one acceptable way to employ ultraviolet to achieve that one-step reduction. By specifying the means to achieve a sensible regulatory end, the agency unnecessarily put hundreds of cider producers out of business and subjected others to years of anxiety.

Regulators should avoid dictating the means to achieve an objective when it would be enough to dictate the objective itself. As Adam Smith and Friedrich Hayek taught, the world is too complicated for officials to know what will work best. Local innovators like Phil Hartman, experimenting and tinkering, drawing on their store of experience and ingenuity, are much better suited to come up with unexpected solutions that will increase the general welfare and prosperity.

The FDA's world is especially complicated. It regulates the giants of the drug, food, and cosmetic industries, so it's no wonder that, from the perspective of its Washington headquarters, small-scale cider producers are invisible. The world is somewhat less complicated at the state level. From Joe Corby's vantage point in the Department of Agriculture and Markets in Albany, New York, Empire State cider makers were not only visible but also important. According to Cornell's Worobo, "Usually, the FDA acts first, and the state agencies follow, but some state regulators stuck their necks out this time, because lots of local businesses were in trouble. These little businesses were beneath the notice of the FDA."

Dan and Susan also come under Environmental Protection Agency regulation. Its world is even more complicated than that of the FDA. Congress requires it to regulate in exacting detail thousands of pollutants coming from millions of sources. According to former Environmental Defense Fund chairman Richard Stewart, now a New York University law professor, the EPA's regulation "has grown to the point where it amounts to nothing less than a massive effort at Soviet-style planning of the economy to achieve environmental goals."

But for the vast majority of pollution sources, the impact is mainly local, and how to regulate it turns on local circumstances. So the EPA is supposed to make a huge number of decisions that should be locale-dependent, cramming a flood of

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controversial choices through the constricted funnel of a single national regulatory system. That is why, under Democratic and Republican presidents alike, it is woefully behind statutory schedule in promulgating new regulations and revising old ones. And in its rush to get the job done, it issues regulations designed to fit hypothetical, standardized firms and farms rather than the multiplicity of real ones.

Even when I was still an environmental litigator, I understood that the EPA could make the world much less complicated by giving polluters more latitude on how to achieve environmental objectives and by devolving the regulation of most of them to the states, excepting only the small number that contribute substantially to interstate pollution. What I did not understand then, but came to understand by witnessing Dan and Susan's regulatory travails, is that making a federal case of intrastate pollution casts yet another pall on individual initiative and creativity.

So immense is the EPA mandate that not only can the agency not understand those it regulates, but it cannot effectively communicate its regulatory requirements, even to large businesses. As an environmental law treatise acknowledges, "[I]t is virtually impossible for a major company (or government facility) to be in complete compliance with all regulatory requirements. [And yet] virtually every instance of noncompliance can be readily translated into a [criminal] violation." When asked in a survey to explain why there is so much noncompliance with environmental laws, environmental attorneys identified the most important factors to be not the cost of compliance, but the "sheer number of regulations," "complexity of regulations," "too many different and conflicting requirements," and "keeping track of changes in regulations."

To decode this complexity, giant corporations put environmental law experts on their payrolls and retain law firms staffed with top environmental specialists. A smaller company can't afford such legal overhead, but even a firm operating a single plant must grapple with almost as much regulatory complexity as a corporate behemoth running 50 plants. Not only do small firms have a tougher time than large ones decoding regulatory requirements; they also face much higher compliance costs: with the EPA, that amounts to $3,328 per employee for firms with fewer than 20 employees, versus $717 for firms with more than 500 employees.

But, of course, the smallest enterprises can't afford to hire any expert help at all. Dan and Susan now worry about the EPA, even though they are committed environmentalists: she had worked for the California Coastal Commission; he chairs the local natural history museum and wildlife sanctuary. They can manage their orchard without causing water pollution but not without pesticides. The EPA, in regulating farmers' use of pesticides, must not only ensure food safety but must also write its regulations so that they leave farmers with some way to protect their crops. In this part of its task, the EPA is much more apt to take account of the largest blocs of farms, such as big corn or soybean spreads in the Midwest, than to pay attention to niche operations like Dan and Susan's. They have a micro-farm in a microclimate, where they face pests unlike those faced by apple growers elsewhere in the country. They understandably fear that the EPA might, in some national administrative hiccup, inadvertently leave them with no way to stop some pest that is killing their trees. To decipher their regulatory fate, Dan has spent hours on the EPA's website but comes away frustrated. His calls to the EPA's help line leave him with "the impression that their computer screens showed the same materials as mine, and they knew less than I did."

It is difficult enough to begin or expand a tiny business without the risk of unwittingly stepping on regulatory land mines. As Phil Hartman's experience with the FDA suggests, a regulatory problem that would have been a minor irritation to a big firm can topple a start-up. Moreover, large corporations can send their teams of lawyers and lobbyists to Washington to impress their concerns on federal regulators. Little firms and farms can't.

Discouraged by his regulatory prospects with the EPA, Dan e-mailed me: "If I could characterize my outlook to the whole process, it would be

FRED HICKEY/COMMUNICATIONS SERVICES NYSAES (NEW YORK STATE AGRICULTURAL EXPERIMENT STATION)

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. . . though Cornell scientist Randy Worobo proved it worked.

variations on the theme of resignation. I am frustrated sometimes by what seems to be EPA's monumental lack of understanding about the complexities that are inherent in running a little farm like ours. But I can't muster much energy for this fight. I can't do everything else I need to do in a day with the weight of concern about EPA on my shoulders." Such a regulatory regime prompts people who want to run their own enterprise to work for others, and for smaller businesses to be acquired by larger ones. Odwalla is now a unit of Coca-Cola, and Naked Juice is a unit of Chiquita Brands.

Dan and Susan could earn more working for a large corporation, but they love being their own bosses and having scope for creativity and initiative. They hope to enlarge that scope by making some of their sweet cider into hard ciders and ice wines. The value added would, if all works well, let them still make a living, even if the EPA drives them out of growing the apples themselves. Of course, making alcoholic beverages requires a permit from a federal agency—no surprise there. They estimate the paperwork for the permit application took about 150 hours of late nights, after days and evenings caring for trees and children. But, according to Susan, "We knew what to expect, and we got the permit. It was a piece of cake compared with the FDA and the EPA."

Agencies like the FDA and the EPA, with the power to regulate means as well as ends, and with jurisdiction over even the most local problems, engage in backdoor central planning. They stifle individual initiative and creativity and herd increasing numbers of would-be entrepreneurs into working for large bureaucratic corporations, which are more capable than smaller, more dynamic firms of dealing with Washington bureaucrats. The upshot is that our work is less enjoyable, because it is directed from on high. It is also less fruitful.

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How to Stop Medicaid Fraud

For starters, states should try.

Steven Malanga

For more than a decade, Medicaid has been the fastest-growing item on many state budgets. Unfortunately, state and federal efforts to uncover and stamp out the astonishing amount of fraud in the program (whose costs the states split with Washington) have lagged. Experts estimate that abuses of Medicaid eat up at least 10 percent of the program's total cost nationwide—a waste of $30 billion a year. Unscrupulous doctors billing for over 24 hours per day of procedures, phony companies invoicing for phantom services, pharmacists filling prescriptions for dead patients, home health-care companies demanding payment for treating clients actually in the hospital—on and on the rip-offs go. The cheating is brazen because scam artists have figured out that years of lax oversight have made Medicaid easy plunder.

Illustrations by Arnold Roth

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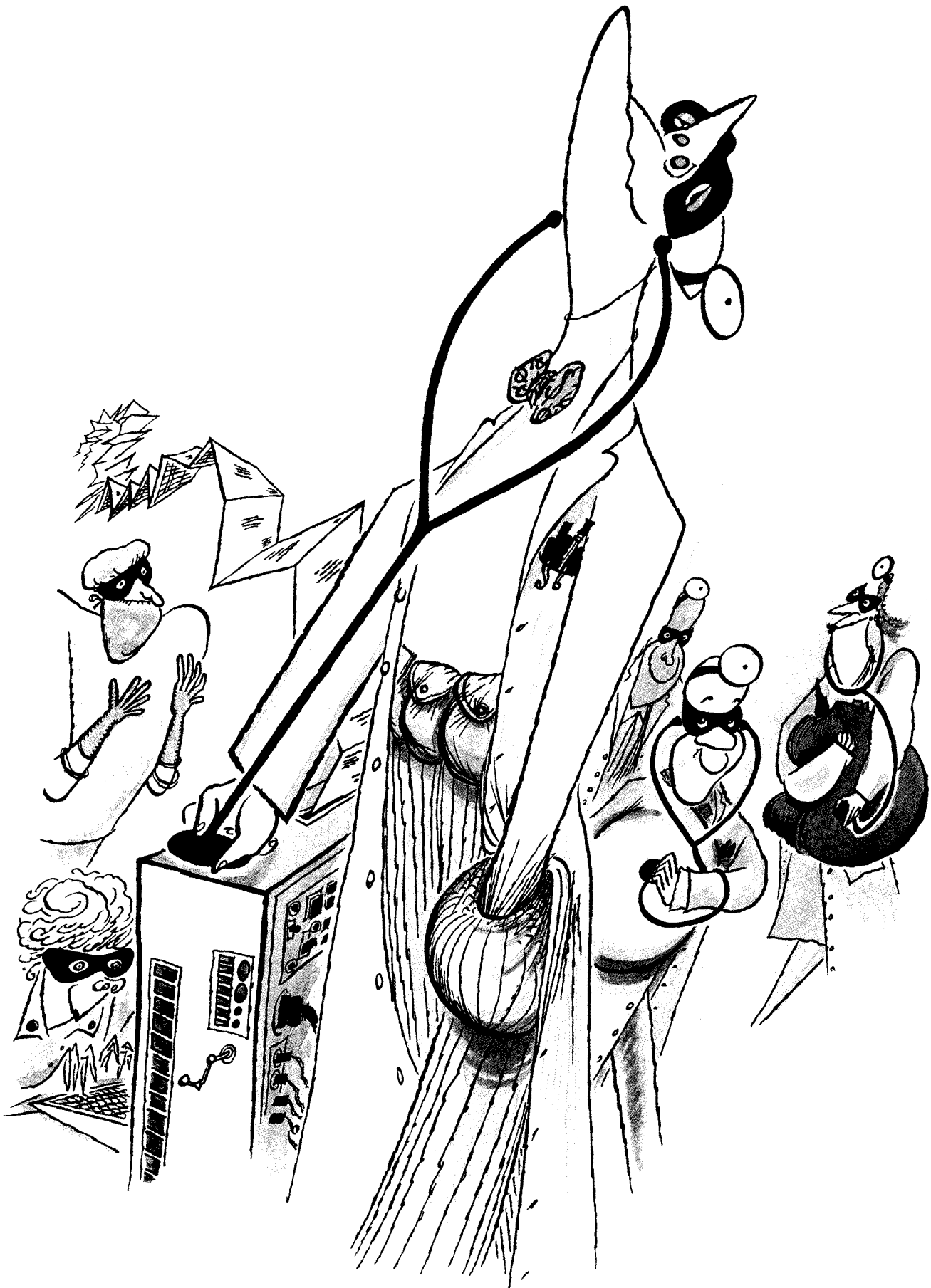

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But some state legislators and regulators, worried about Medicaid's skyrocketing costs and taxpayer anger, are finally getting tough. As a result, several states are beefing up enforcement staffs, installing high-powered fraud-tracking computer programs, toughening penalties, and making it harder for crooked providers to get Medicaid dollars. To succeed, these reform efforts will need to overcome powerful health-care-industry interests and their legislative and bureaucratic allies, who don't want greater scrutiny of the program but only greater funding for it. Yet if the new initiatives can cut Medicaid abuse by even a few percentage points, they'll save taxpayers billions. Using new software that analyzes Medicaid billing patterns, New York's Rockland County, for example, has uncovered thousands of suspicious transactions. "If even just half of the questionable cases we've turned up are fraudulent or incorrect billings, the savings will turn out to be enormous," enthuses County Executive Scott Vanderhoef.

Created in 1965 as part of the Great Society, Medicaid saw its expenditures soar out of control almost overnight. Costing $1 billion in its first year, the program, administered by each state as it sees fit under broad federal guidelines, grew into a $6.3 billion monster after just five years, and an $18 billion behemoth by 1977. Early in the Reagan years, the states and the federal government started cracking down on Medicaid fraud and waste, and briefly stalled the program's growth. But costs started rising again in the late eighties and really took off a decade later, as states, flush with Internet-boom revenues and encouraged by the Clinton administration, loosened eligibility requirements and generously showered new services on patients. In just the last ten years, spending has doubled—a staggering $150 billion net increase.

All the Medicaid spending has state budgets groaning. The program is now the largest item in California's state budget, surpassing even education spending. Florida's Medicaid rolls, swollen over 40 percent in five years, gobbled up 25 percent of the state budget last year. Rhode Island's Medicaid spending jumped from a quarter of the state budget in 2000 to more than 30 percent last year.

Neither the feds nor the states accompanied this huge spending increase with additional resources for fraud detection. Many programs spend derisory sums on enforcement. Over half of states now spend less than one-tenth of 1 percent of their Medicaid budgets to fight fraud. New York cut the number of health-department staffers combating Medicaid scams from 200 in the late eighties to 50 by 2005, even though the state's program (including federal, state, and local expenditures) has grown by $30 billion since then. Several states still use decrepit eighties-era software to try to track hundreds of millions of Medicaid claims yearly, while 14 out of the nation's 53 state and local Medicaid programs employ no experts to analyze and interpret data and detect fraud and waste, a Government Accountability Office study found.

Federal supervision of these fraud-fighting efforts is almost nonexistent. The GAO report disclosed that the federal agency responsible for overseeing Medicaid employs just eight people, wielding a minuscule budget of $26,000 annually (apart from salaries), to oversee anti-fraud initiatives—a level of funding that the GAO describes as "disproportionately small relative to the risk of serious financial loss."

No surprise, then, that Medicaid fraud has become ever more pervasive and audacious. Lightly regulated optional Medicaid services that states have recently added or expanded, such as the provision of medical equipment, are particularly scam-ridden. In one brash scheme, begun in 2000, Nigerian immigrants set up a network of fraudulent medical-supply stores in the Southwest, hoping to swindle Medicaid and its sister program Medicare, the federal insurance program for seniors. The gang hired recruiters to bring them gullible patients eligible for Medicaid or Medicare. They then paid off local doctors to prescribe motorized wheelchairs worth $7,500 a pop for the patients but instead gave them motor scooters worth just $1,500, pocketing the difference. Investigators shut down the scheme after noticing billings for

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wheelchairs in Arizona, Texas, and other states scaling into the hundreds of millions of dollars—much of it lost for good.

Patient transportation services is another field so lucrative and loosely regulated that it draws Medicaid cheats like flies. A Virginia company supposedly founded to shuttle patients to their appointments instead spent its time collecting patient identity info and then billing the government for services it never delivered. In New York State, ambulette firms charge Medicaid over $300 million yearly for undelivered or unnecessary services, often provided in flagrant violation of state rules. A *New York Times* study of the state's Medicaid transportation billings found suspicious patterns galore, including one patient supposedly driven 153 times to doctors' offices and back in one year. And many ambulette-shuttled patients have no trouble walking, investigations going back to the early 1990s have shown, making them ineligible for a service intended for the impaired. I spent a day with a private investigator in Brooklyn and Queens a few years back, watching these companies operate; the vast majority of transported patients were clearly ambulatory. Despite the glaring problems, New York has done little to police the field.

"In just the last ten years, Medicaid spending has doubled—a staggering $150 billion net increase."

Home health care, originally introduced by states into Medicaid to save on nursing-home bills, is also rife with abuse. Since Ohio's home health-care program got under way seven years ago, for instance, practitioners have collected millions of dollars for services never rendered. In one particularly egregious case, a visiting nurse billed the state $338,000 over two years for visits (many of them phony) to just two patients.

It's not just providers of new services who game the system. Unscrupulous licensed practitioners—dentists, MDs, nurses, pharmacists, and even hospitals—rip off the system, too. A Brooklyn dentist built the biggest Medicaid dental practice in New York State within just a year of opening it by submitting a mountain of phony bills, on one occasion billing for 991 procedures for a single day. It was the *New York Times*—and not state investigators—that exposed her, using a simple laptop computer to scrutinize her records.

Administrators at New Jersey's biggest health-care institution, the state-subsidized University of Medicine and Dentistry of New Jersey, knowingly billed Medicaid once for treatments that its staff doctors had provided in their offices—and then billed the program again for the same treatments, claiming that they'd taken place in the hospital. The U.S. attorney for New Jersey uncovered the deceit and forced a court-appointed monitor on the UMDNJ; the investigation is ongoing and may result in indictments. Whatever the outcome, it's New Jersey taxpayers who'll shoulder the burden of repaying the federal government.

While flagrant Medicaid rip-offs like these make headlines, less exaggerated bill padding is commonplace, as practitioners try to cushion their practices from the stingier payments and tougher terms that HMOs and other private insurers have imposed on them. "What you find is that providers put all kinds of things into a bill," says Brian Flood, Medicaid inspector general of Texas. "They pad. You have to be more vigilant."

Medicaid's dramatic expansion has given rise to powerful health-care special interests, including unions and hospital administrators, who very effectively lobby legislators to increase the program's size, rather than contain its costs. Across the country, unions representing home health-care workers, for example, have helped secure Medicaid spending for their

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services: fraud is rampant in the field. An alliance between a union and politically connected nursing-home operators in Ohio recently thwarted legislative efforts to lower costs in nursing homes—institutions that have also proven frequent Medicaid cheats.

Nowhere are these special interests more powerful than in New York. Medical transportation firms hired the state senate majority leader's son as a lobbyist; he helped protect their funding, despite the fact that much of it isn't necessary. State hospitals have also joined with New York's top union boss, Dennis Rivera of the hospital workers' Local 1199, to pressure both Democrats and Republicans to funnel extra revenues into what is already the country's largest Medicaid program, warning that any attempt to restrict the flow of tax dollars would imperil the state's fragile hospitals and cost thousands of jobs. In short, Medicaid, designed to provide health care to the poor, has become a benefactor of the health-care industry, a jobs program, and a gigantic arena of political manipulation.

"New York has fallen behind other states in fighting Medicaid fraud and recovering funds."

With such powerful interests protecting Medicaid spending, enforcement reform isn't high on most New York pols' priority lists. Last spring, some state senate Republicans, concerned about Governor George Pataki's and Attorney General Eliot Spitzer's seeming lack of interest in Medicaid fraud, proposed the creation of a kind of super-cop to fight health-care scams. But the Democrat-controlled state assembly blocked the legislation, fearing that the new position would strip power from Spitzer, a fellow Democrat running for governor. Spitzer himself opposed the new fraud unit, arguing that it would impose onerous new costs on New York government, though research has shown that the typical anti-Medicaid-fraud worker recovers, on average, $200,000 per year. Spitzer's spokesman defended his boss's anti-Medicaid-scam efforts as "successful." But a subsequent *New York Times* series demonstrated that New York has fallen behind other states in fighting Medicaid fraud and recovering funds. The revelations underscored how Spitzer, who has won a tough-guy rep for going after Wall Street firms, becomes a pussycat when it comes to public-sector corruption, perhaps because he feels the need to play ball with major players like Rivera in order to win the gubernatorial race.

Vigorous oversight hasn't seemed important to many state health-care bureaucrats who administer Medicaid, either. A 2005 investigation by Ohio's inspector general, for instance, found that health officials in that state prefer to "educate" doctors, hospitals, and others who overbill Medicaid rather than refer cases for investigation and possible prosecution. Sloppy record keeping and slack pursuit of wrongdoers are endemic. The Ohio agency that supervises Medicaid proved so careless with taxpayer dollars that it accepted a mere $409 to settle a $500,000 overpayment to an ambulance service. In another case, the state demanded payment of just $155,000 from speech centers that had overbilled by $3.4 million. Florida's Medicaid fraud unit couldn't tell auditors what happened to $133,000 in fines levied against one defendant—or if the state had ever gotten paid. More outrageous still, the unit settled a $40 million fraud case against nursing-home operators for a mere $100,000. A federal investigation warned Florida that its anti-Medicaid-fraud effort was so slipshod that it risked losing federal funding.

But the stories of epidemic mismanagement and abuse are pushing some states to take action. Leading the way is Texas. In 2003, its legislature created an inspector general's office, responsible for all of the state's Medicaid enforcement functions. The state hired dozens of new oversight workers to reinforce its troops of

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computer experts, nurses and pharmacists who scrutinize patient records, and prosecutors. As a result, Texas's Medicaid program, which at $18 billion a year is about 60 percent smaller than New York's, has four times as many people working to uncover fraud and prevent billing errors. In 2004, the inspector general's office recommended 257 cases for prosecution, compared with just 37 fraud cases prosecuted in New York. Last year, Texas recovered $441 million in erroneous or fraudulent billings.

Following Texas's lead, Kansas recently set up an inspector general's office, while Ohio's legislature has authorized its state auditor to start inspecting Medicaid providers (previously, only the state's health department could do so). Even New York is now contemplating an inspector general's office. "We need to have one agency and one person who has ownership of the Medicaid fraud problem," says New York state senator and deputy majority leader John DeFrancisco. "Right now, no one person is accountable."

Such officials will be mere window dressing unless legislators give them the tools to prosecute Medicaid fraud effectively—including tougher laws. Many states still do not criminalize Medicaid fraud, so officials must prosecute on insurance fraud, mail fraud, or racketeering charges. That's not always easy, since some courts refuse to recognize Medicaid as an insurance program. But some states are toughening enforcement laws. New Jersey, for instance, now hands out up to ten-year prison sentences for Medicaid fraud, as well as fines of up to five times the amount involved. Other states, such as North Carolina, have made it

Trial Lawyers Aren't the Answer

In the armory of weapons used to combat Medicaid fraud, the False Claims Act gets the most press. The federal law allows whistle-blowers who report fraud against the government to collect up to 30 percent of any money recovered from investigations their information prompts. In recent years, prosecutors aided by whistle-blowers have successfully pursued several huge Medicaid-fraud cases using the FCA, resulting in hundreds of millions of dollars in fines and penalties against drug companies and hospital chains for overbilling the program. Tens of those millions went into the pockets of the whistle-blowers and the lawyers working with them on a contingency basis. These payoffs have set off a flood of further lawsuits. Since Congress amended the law in 1986, hiking the potential payout to whistle-blowers, suits have increased by tenfold, with nearly 70 percent of them involving health-care companies.

But the big paydays have also raised concerns that the FCA is turning into America's latest version of jackpot justice and is distracting attention from more effective ways to fight Medicaid fraud. Whistle-blowers, plaintiffs' attorneys, and even government prosecutors increasingly appear to be abusing the FCA, targeting legitimate businesses for big payouts and using the act's steep penalties, which include the threat of permanent exclusion from government programs as well as big fines and damages, to coerce some companies into settling cases rather than risking a trial verdict that could bankrupt them. A 1999 study by the Government Accountability Office criticized some FCA cases—including one in which the GAO concluded that hospitals that had already agreed to pay steep fines to avoid going to trial had in fact been improperly accused. The GAO study found that prosecutors and whistle-blowers targeted some companies for investigation not because they were plausible fraud suspects but merely because they were the biggest contractors in government health-care programs—that is, the deepest pockets for large paydays.

Plaintiffs' attorneys have helped fuel the fervor for FCA lawsuits, using some of the same tactics that they used to spur litigation frenzy in areas like asbestos and medical malpractice. Shortly after Congress amended the FCA in 1986, a public interest lawyer named John Phillips, who had lobbied heavily for the new legislation, set up a taxpayer-friendly-sounding group,

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easier for prosecutors to win judgments against sham Medicaid providers in civil court. Kansas's legislature, meanwhile, is close to passing bills that would expand the state's asset forfeiture law to cover Medicaid fraud.

States are also making it harder for service vendors and health-care practitioners to become eligible to receive Medicaid funds. Illinois has amended its Medicaid law to require ambulette firms—"a hotbed for potential fraud and abuse," says the state inspector general—to undergo criminal background checks and fingerprinting before participating in the program. After fraudulent Medicaid claims bilked California out of $250 million over several years, that state now requires all new vendors to be on probation for up to 18 months. California inspectors also have started to make on-site visits to providers in fraud-prone services, to keep sham companies out of the program.

Governments are also investing in sophisticated new technology that can monitor Medicaid's staggering number of transactions for suspicious billing patterns. Texas has contracted with University of Texas computer scientists to apply the latest mapping software to its Medicaid database, allowing the state to pick out doctors and pharmacists who attract Medicaid patients from far away—a red flag for possible fraud. "If patients are traveling hundreds of miles and bypassing other providers to go to a certain doctor, you have to wonder why and look more closely at that provider," says state inspector general Brian Flood.

Taxpayers Against Fraud, to tout the FCA to the press, to prosecutors, and to potential whistleblowers. He also set up his own private practice to cash in on the act. Over the last 20 years, Phillips's firm has won some $100 million in contingency fees pursuing FCA cases, according to *Forbes* magazine, and its successes have attracted some 200 more contingency lawyers into the FCA field. Meanwhile, Taxpayers Against Fraud has served as an effective proselytizer. Cited dozens of times a year in press stories as an advocate for the FCA, it has successfully encouraged a handful of states to enact their own versions of the legislation, though press accounts rarely mention that the group is not really a taxpayer organization but a propaganda instrument of the lawyers who benefit from the legislation the group espouses.

One danger of the false-claims lawsuit frenzy is that it will distract from the hard work of tracking down Medicaid fraud, which requires a multifaceted strategy. After the *New York Times* ran a series on New York's lagging anti-fraud efforts, for instance, state attorney general candidate Mark Green, who began his public career working for trial-lawyer ally Ralph Nader, penned an op-ed piece in the *Times* to lobby for a version of the False Claims Act that New York legislators had drafted as the remedy for the state's Medicaid woes, without proposing any of the numerous additional anti-fraud measures that other states now employ. Green even quoted Taxpayers Against Fraud without mentioning that the group's current chairman, Neil Getnick, is a supporter of Green's election bid, and that his FCA law firm could benefit enormously from a New York State law. (Getnick appears in a group photo on Green's campaign site with other lawyer-supporters.)

Correctly conceived, the False Claims Act can be one weapon in an arsenal against Medicaid fraud. But the act needs sensible reforms to discourage abuses, including limiting the size of whistle-blower awards and requiring that whistle-blowers try to end fraud at their employer before filing suits (in some cases, insiders have instead let fraud go on for years after they detected it, and then left the company and sued). Americans for Tax Reform has suggested such reforms of the federal act.

The current law has created open season on legitimate companies and sparked a plaintiffs'-bar feeding frenzy. That's not what Congress intended.

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New York counties must share Medicaid costs with the state, and some have finally gained access to the state's billing database and are using fancy new software programs designed by IBM and Salient Corp. to scrutinize records, looking for potential swindles. Rockland County zeroed in first on prescription drug costs, a swelling part of the Medicaid budget, by running checks on pharmacies that fill the greatest number of Medicaid scripts locally. The county found that one-fifth of all invoices—amounting to more than $12 million—had problems so serious that they warranted further investigation, suggesting either fraud or unintentional overbilling, including prescriptions filled for dead people. Nassau County officials studied transportation costs and, based on the patterns that their software noticed, started questioning providers about bills. In one year, before the county had brought any fraud cases, transportation billings plummeted 10 percent. "Now they knew we were watching them," says a county official. Nassau officials found the decline eye-opening, since "costs never go down," the official notes. Gotham has not joined the program.

Another promising approach is for government watchdogs to merge Medicare billing records with state Medicaid databases, enabling powerful software to examine both sets of records at once. Providers that dupe Medicaid, it turns out, tend to abuse Medicare, too. Calculating the average time that certain procedures take, a pilot computer-driven effort in California found a doctor whose combined Medicaid and Medicare billings added up to over 24 hours per workday. Merely looking at each program separately would not have caught the cheat. California estimates that matching the two databases has saved it nearly $60 million and led to around 80 fraud investigations. Based on the California experiment, six more states are now working with the Medicare database.

Perhaps the most ambitious use of advanced technology against Medicaid fraud is a Texas pilot program that relies on fingerprinting and biometric readers in doctors' offices and hospitals. Medicaid recipients get a "smart card," imprinted with their fingerprint. Electronic card readers then check the fingerprint to verify that the patient applying for care is indeed the cardholder, thereby reducing recipient fraud—about 10 percent of the dollars lost to fraud in the program. Patients swipe the cards not only at the start of a visit but at the end, to record the time they spent at the facility—a safeguard against doctor and hospital overbilling or charging for more elaborate services than those actually provided.

Even with tougher enforcement, states must confront the troubling reality that Medicaid programs have grown too large and complex to manage easily. With even faster growth rates projected in the immediate future, trying to minimize fraud, waste, or simple errors in Medicaid will only get harder. "All this complexity has created a breeding ground for fraud and abuse," Florida governor Jeb Bush said last year.

That's why the best idea for reducing fraud over the long term may be Florida's push to overhaul its entire Medicaid program. Last fall, the federal government gave Florida permission to try a drastic revamping of the system. The state will stop acting as a giant health insurer and instead move recipients into private plans. Florida will pay the insurance companies a yearly fee to enroll the recipients, in the same way that a private employer now pays for its employees to receive health coverage. As in the private sector, each insurer will be responsible for auditing bills and sniffing out fraud by providers or recipients in its system. In effect, Florida will be breaking its Medicaid system into dozens of smaller units, managed by the private sector, where lax efforts to eliminate waste, inefficiency, and incorrect billings will eat away at companies' bottom lines.

Other states have pledged to watch Florida's effort carefully over the next five years. If it succeeds, it may well become the next Medicaid model. Until then, states still have plenty of room for improvement in their efforts to stem Medicaid fraud.

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Why Robespierre Chose Terror

John Kekes

The lessons of the first totalitarian revolution

The American attitude toward the French Revolution has been generally favorable—naturally enough for a nation itself born in revolution. But as revolutions go, the French one in 1789 was among the worst. True, in the name of liberty, equality, and fraternity, it overthrew a corrupt regime. Yet what these fine ideals led to was, first, the Terror and mass murder in France, and then Napoleon and his wars, which took hundreds of thousands of lives in Europe and Russia. After this pointless slaughter came the restoration of the same corrupt regime that the Revolution overthrew. Aside from immense suffering, the upheaval achieved nothing.

Leading the betrayal of the Revolution's initial ideals and its transformation into a murderous ideological tyranny was Maximilien Robespierre, a monster who set up a system expressly aimed at killing thousands of innocents. He knew exactly what he was doing, meant to do it, and believed he was right to do it. He is the prototype of a particularly odious kind of evildoer: the ideologue who believes that reason and morality are on the side of his butcheries. Lenin, Stalin, Hitler, Mao, and Pol Pot are of the same mold. They are the characteristic scourges of humanity in modern times, but Robespierre has a good claim to being the first. Understanding his motives and rationale deepens our understanding of the worst horrors of the recent past and those that may lurk in the future.

Historians distinguish three phases of the French Revolution. The last, the Terror, ran roughly during 1793–94. It began with the fall of the moderate Girondins and the radical Jacobins' accession to power. As the Jacobins gained control of the Committee of Public Safety, which in turn controlled the legislature (the Convention), the disputes among their factions sharpened. After an interregnum of shared power, Robespierre became dictator, and the Terror started in earnest. It took the form of the arrest, show trial, and execution of thousands of people, including the leaders of the Girondins and the opposing Jacobin factions, who were suspected of opposing—actively or passively, actually or potentially—the policies Robespierre dictated.

Robespierre's constituency outside the Convention was the mob, roaming the streets of Paris, the center of the Revolution. Large parts of France were hardly involved; for most people, life went on during the Revolution much as before. The mob in Paris consisted largely of destitute *sans-culottes* ("without knee breeches"), who maintained themselves by a mixture of crime, prostitution, begging, and odd jobs. Robespierre and his followers incited them to action whenever political expediency called for it. But even when unincited, having nothing better to do, they formed the crowd that watched the public executions, jeered and abused those about to die, rejoiced at the severed heads, adulated the leaders temporarily in power, and cursed them after they fell. Like flies, they were everywhere as the Revolution went on its bloody way. Their enraged, expectant buzzing formed the ghastly background of the slaughter of the innocents.

Historical distance and revolutionary rhetoric must not be allowed to obscure the Terror's savagery. The descriptions that follow are only a few among many that could be given. Stanley Loomis writes in *Paris in the Terror* that, in the September massacres of 1792, "the bloody work went on for five . . . days and nights. On the morning of the third, the

Maximilien de Robespierre

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RÉUNION DES MUSÉES NATIONAUX/ART RESOURCE

The murder of the Princesse de Lamballe

prison of La Force was entered and here took place the murder of the Princesse de Lamballe. . . . The frenzy of the crazed and drunken murderers appears to have reached its highest pitch at La Force. Cannibalism, disembowelment and acts of indescribable ferocity took place here. The Princess . . . refused to swear her hatred of the King and Queen and was duly handed over to the mob. She was dispatched with a pike thrust, her still beating heart was ripped from her body and devoured, her legs and arms were severed from her body and shot through cannon. The horrors that were then perpetrated on her disemboweled torso are indescribable. . . . It has been loosely assumed . . . that most of the other victims were, like herself, aristocrats—an assumption that for some curious reason is often supposed to mitigate these crimes. Very few victims were, in fact, of the former nobility—less than thirty out of the fifteen hundred who were killed."

What Robespierre had unloosed were the most depraved urges of society's dregs. The resulting anarchy temporarily served his purpose, much as the *Kristallnacht* served Hitler's, the purges Stalin's, and the cultural revolution Mao's. Each perpetrated the terror to frighten opponents into abject submission and establish himself more firmly in power.

Having secured Paris, in 1793 Robespierre appointed commissioners to enforce his interpretation of the Revolution outside the capital. In the city of Lyon, writes Simon Schama in *Citizens*, the guillotine began its work, but it was found to be "a messy and inconvenient way of disposing of the political garbage. . . . A number of the condemned, then, were executed in mass shootings. . . . [A]s many as sixty prisoners were tied in a line by ropes and shot at with cannon. Those who were not killed outright by the fire were finished off with sabers, bayonets, and rifles. . . . By the time that the killings . . . had finished, one thousand nine hundred and five people had met their end." The commissioner in Nantes "supplemented the guillotine with . . . 'vertical deportations.' . . . Holes were punched in the sides of . . . barges. . . . Prisoners were put in with their hands and feet tied and the boats pushed into the center of the river. . . . [The] victims helplessly watched the water rise about them. . . . [P]risoners were stripped of their clothes and belongings . . . [Y]oung men and women [were] tied naked together in the boats. Estimates of those who perished in this manner vary greatly, but there were certainly no fewer than two thousand."

In the Vendéan massacre, recounts Schama, "Every atrocity the time could imagine was meted out to the defenseless population. Women were routinely raped, children killed, both mutilated. . . . At Gonnord . . . two hundred old people, along with mothers

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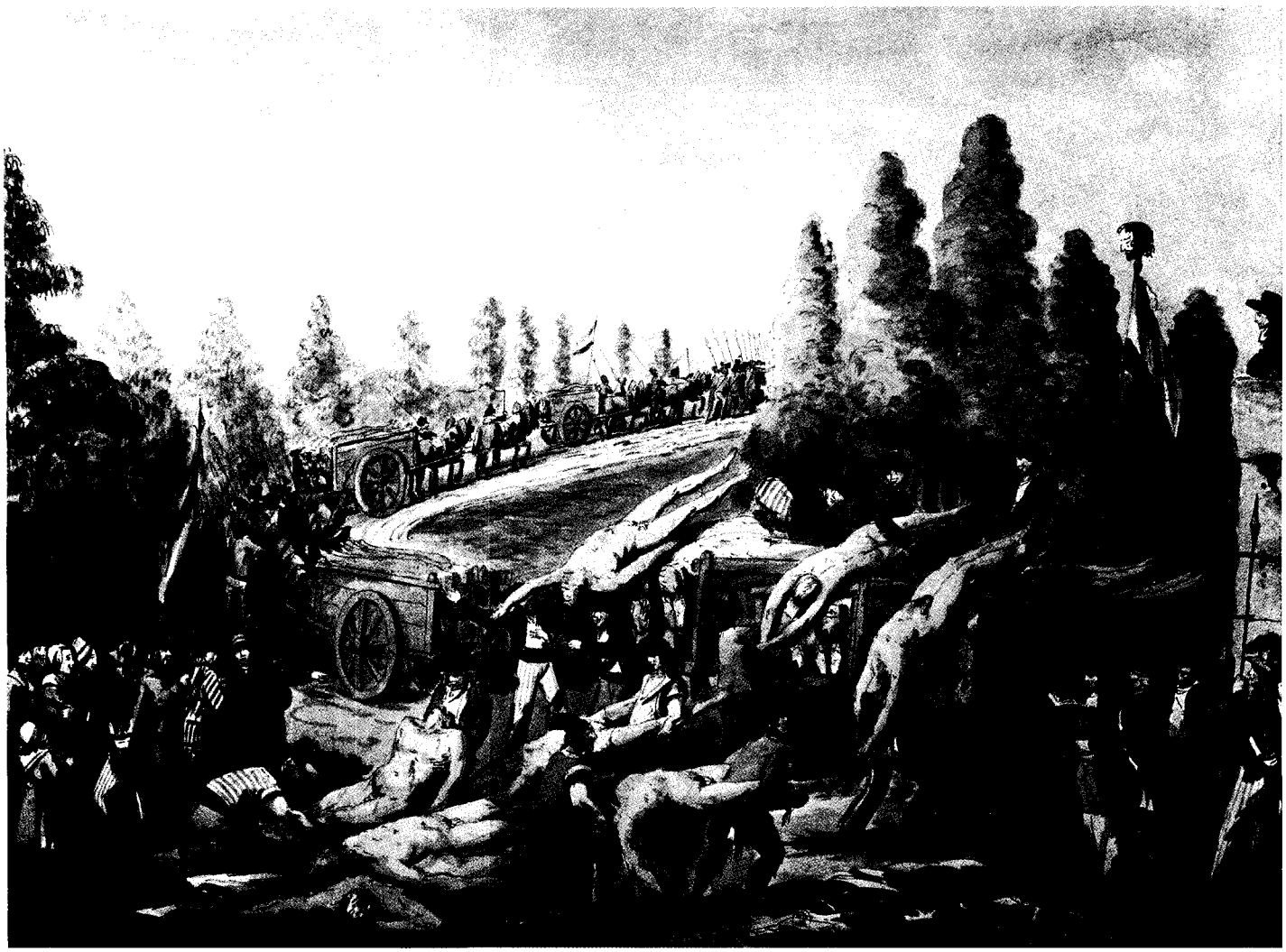

The Revolution dealt in industrial-scale murder.

and children, [were forced] to kneel in front of a large pit they had dug; they were then shot so as to tumble into their own grave. . . . Thirty children and two women were buried alive when earth was shoveled onto the pit." In Paris, Loomis writes, Robespierre ordered the kangaroo court, known as the Revolutionary Tribunal, to be "as active as crime itself and conclude every case within twenty-four hours." "The victims were shepherded to the courtroom in the morning and, no matter how many of them there might be, their fate was settled by no later than two in the afternoon of that same day. By three o'clock their hair had been cut, their hands bound and they were in the death carts on their way to the scaffold." "Between June 10 and July 27 [1793] . . . 1,366 victims perished." Most of these people were innocent of any crime and were unable to defend themselves against accusations of which they were not even informed.

These atrocities were not unfortunate excesses unin-

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tended by Robespierre and his henchmen but the predictable consequences of the ideology that divided the world into "friends" and less-than-human "enemies." The ideology was the repository of the true and the good, the key to the welfare of humanity. Its enemies had to be exterminated without mercy because they stood in the way. As the ideologues saw it, the future of mankind was a high enough stake to justify any deed that served their purpose. As Loomis puts it, "[A]ll who played a role in the drama . . . believed themselves motivated by patriotic and altruistic impulses. All . . . were able to value their good intentions more highly than human life. . . . There is no crime, no murder, no massacre that cannot be justified, provided it be committed in the name of an Ideal."

The ideal, however, was simply what Robespierre said it was. And the law was what Robespierre and his followers willed it to be. They changed it at will and determined whether its application in a particular case was just. The justification of monstrous actions by appealing to a passionately held ideal, elevated as the standard of reason and morality, is a characteristic feature of political ideologies in power. For the Communists, it was a classless society; for the Nazis, racial purity; for Islamic terrorists, their interpretation of the Koran. The shared feature is that the ideal, according to its true believers, is immune from rational or moral criticism, because it determines what is reasonable and moral.

Norman Hampson notes in his biography of Robespierre that "the revolutionary tribunal . . . had become an undiscriminating murder machine. . . . Imaginary . . . plots and absurd charges were everyday events." As Robespierre put it, "Let us recognize that there is a conspiracy against public liberty. . . . What is the remedy? To punish the traitors." Hampson writes: "Robespierre took the attitude that clemency . . . was a form of sentimental self-indulgence that would have to be paid for in blood." He declared: "There are only two parties in France: the people and its enemies. We must exterminate those miserable villains who are eternally conspiring against the rights of man. . . . [W]e must exterminate all our enemies." Robespierre, recounts Schama, "rejoiced that 'a river of blood would now divide France from its enemies.'"

The result of this climate of hysteria was Robespierre's Decree of the 22nd Prairial. It "expressed in principle the views of the whole Committee [of Public Safety]," writes J. M. Thompson in his biography of Robespierre. "The Committee was fanatical enough to approve, and the Convention powerful enough to enforce, as a New Model of Republican justice . . . a law which denied to prisoners the help of counsel, made it possible for the court to dispense with witnesses, and allowed no sentence except acquittal or execution; a law which, at the same time, defined crimes against the state in such wide terms that the slightest indiscretion might bring one within the article of death. To any right-minded or merciful man such procedure must seem a travesty of justice."

Empowered by this model republican justice, the Revolutionary Tribunal sent to death 1,258 people in nine weeks, as many as during the preceding 14 months. "The inescapable fact" about Robespierre, notes Hampson, is that "under a judicial system which he initiated and helped to direct . . . a government of which he was, perhaps, the most influential member, perpetrated the worst enormities of the Terror. . . . [N]o defence is possible for the wholesale massacres . . . in which . . . an average rate of thirty-six [persons] a day were sent to the guillotine." Robespierre "became as incapable of distinguishing right from wrong—not to say cruelty from humanity—as a blind man is of distinguishing night from day." Let us now try to understand his frame of mind.

Robespierre was born in 1758 in the town of Arras. His father was a feckless lawyer; his mother, the daughter of a brewer, died in childbirth when Robespierre was six. A few months after her death, the father deserted his four young children. Robespierre and his brother went to live with their maternal grandpar-

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Revolutionary rape and pillage in an inn

ents. At 11, not an unusual age in those days, Robespierre won a scholarship to the University of Paris. After ten years there, he emerged with a law degree, returned to Arras, and started to practice law. In early 1789, he won election to the Convention as a representative of the Third Estate in Arras. Beginning as a fairly radical democrat, he became, as the Revolution unfolded, more and more radical.

Robespierre never married. He was not known to have had any love affairs. Nor did he have any interest in sex, money, food, the arts, nature, or indeed anything but politics. He was about five feet three inches tall, with a slight build, a small head on broad shoulders, and light chestnut hair. He had "nervous spasms which occasionally twisted his neck and shoulders, and showed themselves in the clenching of his hands, the twitching of his features, and the blinking of his eyelids," says Thompson. He dressed fashionably and wore glasses, "which he was in the habit of pushing up onto his forehead . . . when he wished to look anyone in the face." "His habitual expression seemed to his friends melancholy, and his enemies arrogant; sometimes he would laugh with the immoderateness of a man who has little sense of humor; sometimes the cold look softened into a smile of ironic and rather alarming sweetness." With his shrill, rough voice, "[h]is power as a speaker . . . lay less in the manner of his delivery, than in the seriousness of what he had to say, and the deep conviction with which he said it."

Robespierre made no secret of his convictions. He expressed them in several crucial speeches, of which copies,

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written in his own hand, remain. In his August 1792 speech, Robespierre said that France was living through one of the great events in human history. After an initial period of stumbling, the Revolution of 1789 became in August 1792 "the finest revolution that has ever honored humanity, indeed the only one with an object worthy of man: to found political societies at last on the immortal principles of equality, justice and reason." The Revolution was the finest ever, because, for the first time in history, "the art of government" aimed not at "deceiving and corrupting man" but at "enlightening them and making them better." The task of the Revolution was "to establish the felicity of perhaps the entire human race." "The French people seems to have out-distanced the rest of the human race by two thousand years."

But a serious obstacle barred the way. "Two opposing spirits . . . [are] contending for domination . . . [and] are fighting it out in this great epoch of human history, to determine for ever the destinies of the world. France is the theater of this terrible combat." The conflicts between the friends and the enemies of the Revolution "are merely the struggle between private interests and the general interest, between cupidity and ambition on the one hand and justice and humanity on the other." All the current political choices, consequently, were choices between good and evil, allowing Robespierre to demonize his opponents.

Note that in declaring his aim to be a society in which "the immortal principles of equality, justice and reason" would prevail, Robespierre simply dropped liberty and fraternity, substituting whatever *he* regarded as justice and reason. The justification of the massacres was that those killed were enemies of the republic, counterrevolutionaries who had conspired against that equality, justice, and reason whose realization would "establish the felicity of perhaps the entire human race." The pivot on which all turned was those principles of equality, justice, and reason, which Robespierre spelled out in a declaration that formed the basis of the Constitution of 1793. Some extracts: "Article 1. The object of every political association is to safeguard the natural and imprescriptible rights of men." "Article 3. . . . rights belong equally to all men, whatever their physical and moral differences." "Article 4. Freedom is the right of every man to exercise all his faculties at will. Its rule is justice, its limits are the rights of others, its source is nature, its guarantee is the law." "Article 6. Any law which violates the imprescriptible rights of man is essentially unjust and tyrannical."

How did Robespierre actually interpret these principles? He said: "[W]e must exterminate all our enemies with the law in our hands"; "the Declaration of Rights offers no safeguard to conspirators"; "the suspicions of enlightened patriotism might offer a better guide than formal rules of evidence." Commenting on an execution, he said: "Even if he had been innocent he had to be condemned if his death could be useful." In a letter advising the Revolutionary Tribunal, he wrote: "People are always telling judges to take care to save the innocent; I tell them . . . to beware of saving the guilty."

Collot, the official commissioner he personally appointed to supervise the massacres, expressed succinctly their shared interpretation of the principles enshrined in the Declaration: "The rights of man are made, not for counter-revolutionaries, but only for *sans-culottes*." Saint-Just, Robespierre's closest ally, said: "[T]he republic consists in the extermination of everything that opposes it."

The inconsistency between the Declaration, providing the basis of the constitutional guarantee of equal rights for all citizens, and the actual policies that Robespierre dictated and that his followers enforced, was so blatant as to require an explanation. This Robespierre provided in a speech in December 1793. "The object of a revolutionary regime is to found a republic; that of a constitutional regime is to carry it on. The first befits a time of war between liberty and its enemies; the second suits a time when freedom is victorious, and at peace with the world." The current regime in France was revolutionary,

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THE ART ARCHIVE/MUSÉE DU CHÂTEAU DE VERSAILLES/DAGLI ORTI

L'étendard sanglant est levé.

he argued, struggling to become constitutional. But internal enemies threatened the successful completion of this struggle. "Under a constitutional regime," he went on, "little is needed but to protect the individual citizen against abuse of power by the government; but under a revolutionary regime the government has to defend itself against all the factions which attack it; and in this fight for life only good citizens deserve public protection, and the punishment of the people's enemies is death." The revolutionary regime "must be as terrible to the wicked as it is favorable to the good."

There was, therefore, no inconsistency between the Declaration and the Terror. "The Declaration of Rights offers no safeguard to conspirators who have tried to destroy it." The Declaration guided the constitutional regime whose establishment was the ultimate aim. The Terror was merely the means to it, forced on the revolutionary regime by enemies who prevented the realization of the constitutional regime.

This piece of sophistry was then new, but to those who look back on the twentieth century it is depressingly familiar from the use that many murderous regimes have made of it. They all claimed that

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their aim was human well-being, but that incorrigibly wicked enemies, who have disguised their true nature and conspired against the noblest of aims, threatened its achievement. The supposed threat was so serious, and the aim so important, as to warrant extreme, albeit temporary, measures—to identify enemies, unmask their conspiracies, and exterminate them. To a handful of clear-sighted and courageous heroes of the revolution—like the KGB, the SS, and the Red Guard—falls the duty of performing these necessary tasks. They must harden their hearts and do what needs to be done in the interest of the greater good. The grave threat averted, the extreme measures will no longer be necessary, and then human well-being will be within everyone's reach.

A remarkable feature of the ideological frame of mind is that those in its grip actually believe these justifications for disemboweling, lynching, mutilating, burying alive, drowning, and hacking to pieces their unfortunate victims. In fact, the atrocities only strengthen the utter certainty with which ideologues hold their convictions and impose their aim.

An ideology is a worldview that makes sense of prevailing political conditions and suggests ways of improving them. Typical ideologies include among their elements a metaphysical outlook that provides a God's-eye view of the world, a theory about human nature, a system of values whose realization will supposedly ensure human well-being, an explanation of why the actual state of affairs falls short of perfection, and a set of policies intended to close the gap between the actual and ideal. This last component—commitment to a political program and its implementation—is what distinguishes ideologies from religious, personal, aesthetic, or philosophical systems of belief. Ideologies aim to transform society. Other systems of belief do not involve such a commitment; if they do, they become ideological.

In the course of history, many different and incompatible ideologies have held sway, all of them essentially speculative interpretations that go beyond undeniable facts and simple truths. Resting on fallible hypotheses about matters that transcend the existing state of knowledge, they are especially prone to wishful, self-deceiving, anxious, or self-serving thinking—to unchecked flights of fantasy and imagination. Reasonable people therefore regard ideologies, including their own, with robust skepticism and demand of them conformity to elementary standards of reason: logical consistency, the explanation of indisputable and relevant facts, responsiveness to new evidence and serious criticism, and recognition that the success or failure of policies derived from them counts as confirming or disconfirming evidence.

The source of Robespierre's deepest convictions and of his certainty about them was his unquestioning commitment to an ideology he had largely derived from Rousseau, whom he regarded as "the tutor of the human race." This ideology led him to believe that politics was an application of morality and that a good government was based on moral principles that ineluctably cause the interests of individuals to become indistinguishable from the general interest. Put another way, uncorrupted human beings intuitively recognize and act in the general interest. Any divergence between individual and general interest indicates the individual's immorality and irrationality. If any individual fails to see that his true interests are the same as the general interest, he must be forced to act as if he did see it, for his own good.

But who are those uncorrupted human beings who know what is in the general interest? Robespierre answers: "There do exist pure and sensitive souls. There does exist a tender, but imperious and irresistible passion . . . a profound horror of tyranny, a compassionate zeal for the oppressed, a sacred love of one's country, and a love of humanity still more holy and sublime, without which a great revolution is no more than the destruction of a lesser by a greater crime. There does exist a generous ambition to found on earth the first republic in the world. . . . You can feel it, at this moment, burning in

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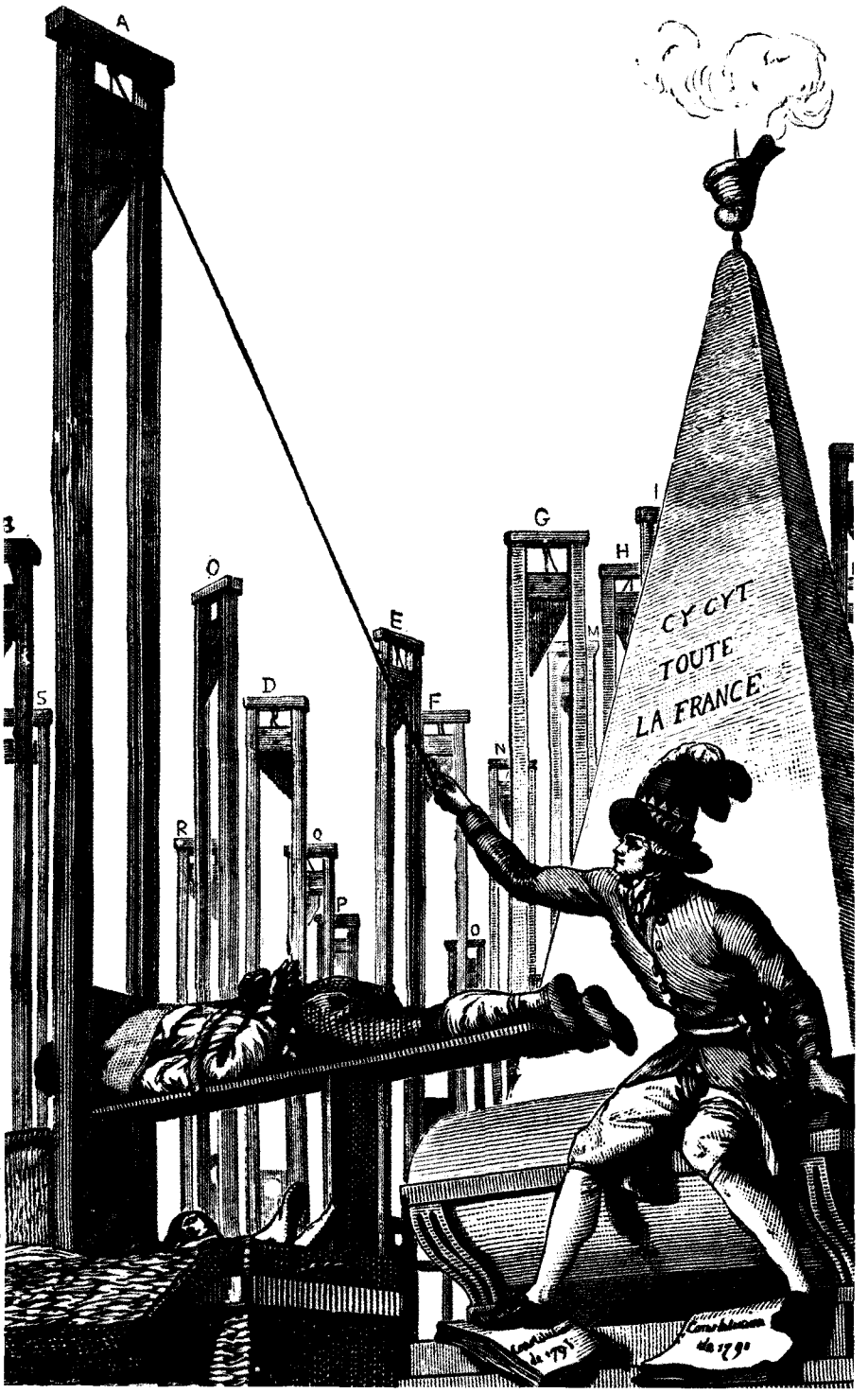
your hearts; I can feel it in my own." The plain message when the bombast is deflated is that, since the people have been corrupted, they cannot be trusted to know what is good for them, but he, Robespierre, knows, because he is uncorrupted.

If he had left it at that, his belief in his own purity would be no more than a megalomaniac's offensive folly. But he did not leave it at that. He regarded it as his duty to coerce the corrupted population to live according to what he in his purity regarded as virtue. He said: "The enemies of the Republic are cowardly egoists, the ambitious and the corrupt. You have driven out the kings, but have you driven out those vices that their fatal domination bred within you?" Robespierre convinced himself—and coerced others to believe or pretend to believe—that his will was the general will, the will that everyone would act on if everyone were as pure as he. When he encountered opposition, he knew with absolute certainty that his opponents were either vicious and had to be exterminated for the common good, or were ignorant and had to be coerced for their own good to act as if they were as pure and virtuous as he.

The basis of Robespierre's ideology was not reason but



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"Robespierre, after having had all the French guillotined, beheads the executioner." This caricature cost the engraver his life.

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passion, which became his touchstone of reason and morality. He did not ask whether he should nurture that passion, whether it was an appropriate reaction to the facts, whether it was too strong, or whether he should be guided by it. The aim of his politics was to make the world fit his passion, not vice versa. The result was that he blinded himself to the actual requirements of reason and morality and decreed the murder of thousands simply because he suspected that they might disagree with his passionately held views. All the while, he self-righteously proclaimed that his vicious actions were virtuous and that he was the champion of reason and morality.

It may be said in a misguided attempt to defend Robespierre that he sincerely believed his ideology and acted on it in good faith; people can do no more than that. Of course, if this excuse were valid, it would, absurdly, excuse SS concentration-camp guards, if they were sincere Nazis; KGB torturers, provided they were committed Communists; or Islamic terrorists, if they are truly fanatical. But the reprehensible beliefs of the ideologues strengthen rather than weaken responsibility for such actions. One wants to say that people ought not hold beliefs from which monstrous actions follow. And this is just what is right to say in response to any effort to excuse Robespierre. If his ideology led him to mass murder, he should not have held it.

Many people, of course, do not choose the ideology they hold but acquire it through indoctrination. It may be too much to demand of them to resist indoctrination, if it is persistent and sophisticated, and if they know of no reasonable alternatives. Not being able to resist ideological indoctrination, however, is one thing; committing atrocities in its name is quite another. People do have a choice as to whether they torture or murder. Decent people will question their ideology if they see that it leads to inflicting horrors. And if they do not question it and commit atrocities, then they are justly held responsible not for what they believe but for what they have done.

Robespierre, however, was not indoctrinated. He constructed his ideology himself, from his readings, education, and early political experience. As a lawyer trained to sift through evidence and evaluate the interpretations of facts, he had the ability to think critically about his ideology; yet he did not. He is, therefore, responsible for the mass murder he caused. And the same is true of countless Communists, Nazis, Maoists, and terrorists who chose their ideology in preference to readily available alternatives of which they could not be ignorant.

But why did all those follow Robespierre who did not share either his ideology or his monstrous passion? Many followed because he let them act on their worst urges, which they had to suppress when law and order prevailed. Others—overwhelmed by the political changes, by the widespread chaos and uncertainty, by the blood that had already been shed—yearned to understand what was going on, what justified it, and what its aim was. Many people accepted Robespierre's explanation, bombast and implausibility notwithstanding, because any explanation of what they were living through was better than no explanation.

But the chief reason that people followed him was fear. No one was safe, and people hastened to testify by words and deeds that they were loyal, enthusiastic supporters. Robespierre wielded his power over life and death as arbitrarily as Hitler, Stalin, and Mao did. Arbitrariness is the key to terror: if there are no rules, justifications, or reasons, then everyone is at risk. People can try to minimize the risk only by outdoing others in toeing the line. Dictators understand that, and it explains much of the "spontaneous demonstrations" and public adulation that they extract from the duped and terrified people at their mercy.

Robespierre, who saw himself as a romantic hero battling against great odds, yearned for power and was indifferent to the cost of achieving it. When he succeeded in concocting an ideology from the flotsam of

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Rousseau's ideas and other bits and pieces, he held on to it with fanatical dedication, for it provided him not merely with a political program but also with a justification of his quest for power. In a strangely closed circle, when he perpetrated the monstrous acts of the Terror, he took their very monstrosity as evidence of the purity of his motivation and convictions. He and his fellow ideologues were the elect whose passions guided them to know good and evil, truth and falsehood, however obscene or forbidden their actions might appear to the unelect.

Though Nazism, Communism, various kinds of terrorism, and white, black, and yellow racism demonstrate how easily ideologies lead to inhumanity, not even irrational and immoral ideologies lead necessarily to mass murder, of course. Ideologues must have the opportunity to act in accordance with their beliefs—opportunities that spring from the combination of deep and widespread resentment about the burden that people must bear, weak or weakening government, and no prospect of quick and substantial improvement. It was the presence of these conditions that permitted Robespierre to become the monster he was.

Castigating Robespierre more than 200 years after his death would have little point if he were not the prototype of the ideological frame of mind that is very much with us today. If we understand him, we understand that it is utterly useless to appeal to reason and morality in dealing with ideologues. For they are convinced that reason and morality are on their side and that their enemies are irrational and immoral simply because they are enemies. Negotiation with such people can succeed only if we have overwhelming force on our side and have shown ourselves unsqueamish about using it. Justifying its use to the electorate of a democratic country—used to thinking of politics as a process of reasonable negotiation and compromise—must involve showing in sickening detail the monstrosities committed in the name of the ideology. And that is the point of reminding ourselves of the crimes of the long-dead Robespierre. ■

ARCHIVO ICONOGRAFICO, S.A./CORBIS

In fact, however, other Jacobins guillotined Robespierre in July 1794 so he couldn't guillotine them.

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The Plaza's First Century—and Its Second?

David Garrard Lowe

The matchless grandeur of Gotham's great landmark

For almost a year, New Yorkers have worried that the Plaza Hotel, one of the city's most cherished buildings, might suffer irredeemable alteration. Since last May, when the hotel shut its doors for renovations, we have watched nervously as the net-shrouded structure, its elegant furnishings removed and auctioned off, became a construction site. The first alarms sounded in January 2005, when the Israeli real-estate company Elad bought the 99-year-old hostelry for $675 million. Elad swiftly announced plans to transform most of the Plaza's 800 guest rooms to luxury condominiums, reserving just 150 rooms on the less desirable 58th Street side for a small hotel and converting many of the building's beloved public spaces to retail use. Rumors spread that the magnificent Oak Room would soon be a dress shop, and that escalators would drive through the ballroom where Jack and Jackie Kennedy once tripped the light fantastic, though the company had reassured unhappy preservationists and the general public that it would preserve these glorious spaces, where generations of New Yorkers have danced, dined, drunk, and married.

The Plaza exterior, designated a New York City Landmark in 1969 and listed as a National Historic Landmark in 1986, has ample legal protection. The real threat, observers feared, was to the hotel's matchless interiors, which had no such security. These spaces included, in addition to the Oak Room and the Grand Ballroom, such Gotham icons as the Palm Court and the Oak Bar. A number of organizations, including the New York Landmarks Conservancy, the Municipal Art Society, and the Beaux Arts Alliance, began meeting with Elad officials and with the Landmarks Preservation Commission, which in the summer of 2005 conferred landmark status on eight of the Plaza's most important public spaces. Few New Yorkers would question the decision. The Plaza's architecture, history, and superb location together embody the very meaning of the word "landmark."

New York boasts sites where the combination of distinguished architecture and palpable memory summon up the awesome energy and notable personalities that have forged the metropolis. You find yourself thrust, as if by a time machine, backward into past eras. Manhattan's Grand Army Plaza, stretching from 58th to 60th Street along Fifth Avenue, is unquestionably such a site.

Position yourself near Carrère & Hastings's high fountain, capped by Karl Bitter's bronze Pomona (a gift from newspaperman Joseph Pulitzer), and New York's history reverberates. To the south stands Buchman and Kahn's Bergdorf Goodman store, an elegant 1929 proto-Deco composition beneath a restrained mansard roof. Bergdorf's occupies the site of the 137-room château that George B. Post and Richard Morris Hunt erected for Cornelius Vanderbilt II and his wife, Alice, between 1882 and 1892—the largest private city house ever constructed in the United States. Head of the New York Central Railroad, Vanderbilt went on to build the Breakers in Newport, the posh resort's biggest summer "cottage." The Vanderbilts' daughter Gertrude, a sculptor, married the equally rich Harry Payne Whitney and founded the Whitney Museum. The Vanderbilts' mammoth New York mansion came down in 1927, the victim of real-estate taxes that had soared to $129,120 a year.

FPG/HULTON ARCHIVE/GETTY IMAGES

The Plaza Hotel around 1910

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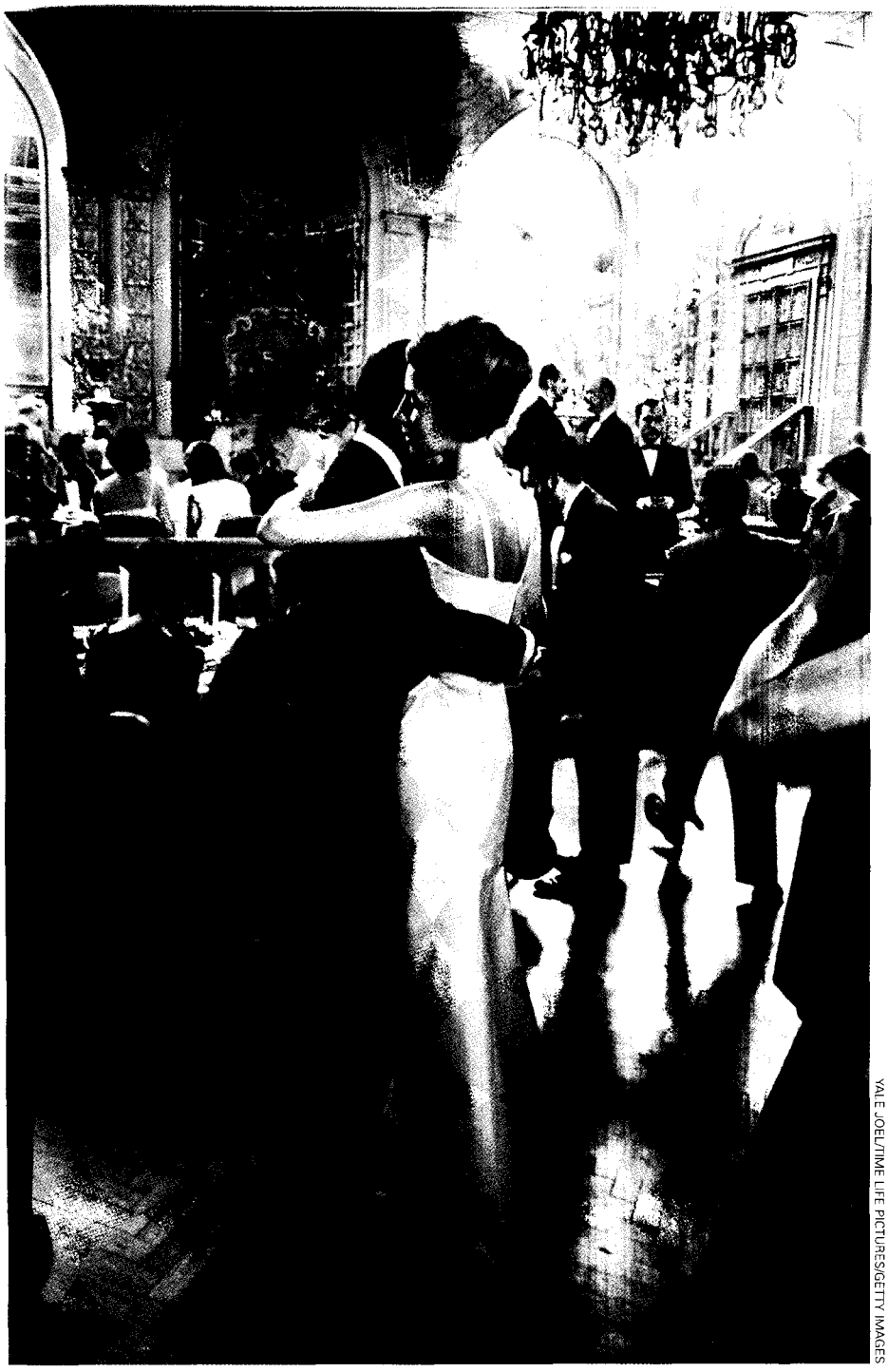

YALE JOEL/TIME LIFE PICTURES/GETTY IMAGES

Mrs. Alfred Gwynne Vanderbilt dances with Anthony Bliss in the Terrace Room in 1960.

Anchoring the Grand Army Plaza's northeast corner is the shimmering white Tuckahoe and Vermont marble of the magnificent Metropolitan Club, modeled loosely upon the Palazzo Pandolfini in Florence. The club's classical marble and copper cornice, projecting six feet beyond the facade, is one of the handsomest in the city. Financier J. P. Morgan and a passel of Vanderbilts, Goelets, and Roosevelts founded the Metropolitan for wealthy business associates—some truly diamonds in the rough—blackballed by the city's stuffier clubs, the Union and the Knickerbocker. (When the Metropolitan opened in 1894, people immediately dubbed it the "Millionaire's Club.") With the building's great marble hall, architect Stanford White created one of New York's most dazzling interior spaces. The two-story hall, almost a cube—53 by 54 feet and 45 feet high—is sheathed in black-mottled white marble that rises to open galleries, supported by 12-foot columns with gilt Ionic capitals reaching up to a white and wine-red coffered ceiling.

In his 1907 book *The American Scene*, New York native Henry James, surveying Grand Army Plaza, wrote: "The best thing in the picture, obviously, is Saint-Gaudens' great group, splendid in its golden elegance . . . . The refinement prevails and, as it were, succeeds; holds its own." Augustus Saint-Gaudens's gilded equestrian statue of Union general William Tecumseh Sherman, preceded by a female figure symbolizing victory, has indeed held its own since 1903, when first mounted on its Charles F. McKim–designed granite pedestal. The Sherman family had initially asked that the statue stand in front of Ulysses S. Grant's tomb on Riverside Drive. But the Sherman and Grant families were not friendly, and the Grants, thinking that the statue would upstage the former president's burial place, vetoed the idea. How fortunate the Shermans were, for this wonderful statue now rests on one of Manhattan's supreme spots. Like some golden knight, the general seems to gallop out of the

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bosky expanse of Central Park, ready to charge south down Fifth Avenue, determined once more to burn Atlanta.

So much in such a confined space: Vanderbilts, Carrère & Hastings, Stanford White, Joseph Pulitzer, Augustus Saint-Gaudens, Charles F. McKim, William Tecumseh Sherman, and J. P. Morgan. But the structure that gives Grand Army Plaza its inescapable consequence is the eponymous Plaza Hotel. It presides over the square's western side with dignity. Viewed from the northeast, the hotel is like a gargantuan crossroads signpost, marking the spot where the commerce of Fifth Avenue halts and the luxurious residences of the upper avenue and the semi-wild expanse of Central Park commence.

The Plaza Hotel has something of the ages about it, something both old and new, splendidly captured by its architect, Henry Janeway Hardenbergh. The viewer knows at once that the structure is from another era, but its elevations aren't fusty or retrograde. The hotel subtly merges architectural modernity with just enough of a bow to the past to give a humane quality to its great scale. This brilliant balancing act has its roots in the style of Paris's Ecole des Beaux-Arts, whose aesthetics looked back to the classicism of ancient Greece and Rome and the Renaissance even as the school wholeheartedly embraced the new materials and techniques of the Industrial Revolution: iron, steel, plate glass, steam heat, electricity, the elevator. This dynamic combination of tradition and the up-to-date also gives Beaux Arts masterpieces such as the New York Public Library and Grand Central Terminal their elegant practicality.

To attract customers, Hardenbergh's Plaza design made it clear that this was a hotel with state-of-the-art creature comforts, while adding to the design mix the necessary quotient of the historically familiar to make the edifice distinctive and alluring. To achieve this, he gave his hotel the tripartite form of a column, separating the three-story limestone base from the shaft with a bold stringcourse. The base's rich embellishment of Doric columns, elaborate pilasters, and balustrades relates it at street level to the vanished structures that once bordered Grand Army Plaza—the Vanderbilt mansion to the south and the Savoy Hotel and the Balkenhayn Apartments across Fifth Avenue, on the site now occupied by the General Motors Building. This rich base also offered a warm invitation to enter the caravansary.

The nine-story shaft rising above this elaborately ornamented base, by contrast, boldly proclaims its architectural modernity. Its unadorned surface of creamy terra-cotta signals that this is no load-bearing wall but a curtain wall, a thin skin hung upon the steel-framed skeleton beneath. The shaft exemplifies the theories of the pioneer skyscraper designer Louis Sullivan, who summed up the essential attraction of the tall building: "The appeal and the inspiration lie, of course, in the element of loftiness, in the suggestion of slenderness and aspiration, the soaring quality as of a thing rising from the earth in a unitary utterance."

Above the simple shaft, a luxuriant capital crowns the Plaza. Visually preparing for this grand finale are rounded tourelles, climbing from the base to the roofline, to end there beneath graceful domes. Aware that he was building on a site that provided unobstructed views of two facades—an almost unique advantage in Manhattan—Hardenbergh made the most of the opportunity, terminating his structure with an architectural ensemble that resembles a château set atop a high, white cliff. Indeed, the Plaza's mélange of sharply pointed gables, innumerable dormer windows, and crested mansard roofs recalls the grandeur of some Renaissance French castle on the Loire River, such as Valençay or Chambord.

The area around the Plaza wasn't always the elegant, carefully planned precinct we know today. It took decades for New York City to move up Manhattan Island to the neighborhood of 57th Street. When Edith Jones, later Edith Wharton, was born in 1862 on West 23rd Street, that location

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was as far north as anyone with even a modicum of social pretension could live. And when, five years later, her elder cousin Mary Mason Jones built a group of houses known as "Marble Row" way up at the northeast corner of Fifth Avenue and 57th Street, most people considered her wildly eccentric. In *The House of Mirth*, Wharton characterized the neighborhood as a place of onetime saloons, wooden greenhouses, and "rocks from which goats surveyed the scene." And while Frederick Law Olmsted and Calvert Vaux began work on Central Park in 1858, it took nearly 20 years for them to complete it. In fact, the Plaza's future site, reports Curtis Gathje in *At the Plaza*, was what New Yorkers generally knew as the Fifth Avenue Pond: "During the winter, this pond was reserved by the New York Skating Club for use as a private skating rink."

But by the early 1880s, the choice locale was far too valuable to remain a mere amusement center. In 1880, a consortium purchased the site for a high-class apartment hotel. They hired as architect Carl Pfeiffer, who in 1875 had designed the brownstone Gothic Revival Fifth Avenue Presbyterian Church at the northwest corner of 55th Street. But after a series of catastrophic cost overruns and nasty lawsuits, Pfeiffer lost the commission, and McKim, Mead & White came on to complete the half-finished structure. The rather somber seven-story building—relieved by faint touches of Renaissance decoration—opened October 1, 1890. Though McKim, Mead & White tried to enliven its interiors with mosaic pavements, mahogany paneling, tapestries, and a Mexican onyx bar, this first Plaza lacked the glitter and grandeur that Gilded Age New Yorkers expected of their new hotels.

The negative reviews about its general appearance, as well as its uneconomically short height, sealed the Plaza's fate barely 12 years after it opened. (Proposals had come up to enlarge the structure, but it turned out that the foundation couldn't carry additional stories.) In 1902, the U.S. Realty and Construction Company, headed by Harry Black, bought the hotel for $3 million. A friend, financier Bernhard Beinecke, had urged Black to acquire the building because of its incomparable location.

Important financial backing for the purchase came from the legendary John W. "Bet-a-Million" Gates, who started out as a barbed-wire salesman in Chicago and became a millionaire by the age of 30. Gates was renowned for betting on almost anything. But his ultimate renown came from one August evening in 1902, when he won a cool $300,000 at Canfield's casino in Saratoga Springs, New York. Gates liked to live well and had found no hotel in New York City that fully met his sybaritic standards. But Gates *did* like Saratoga's United States Hotel, run by one of the most successful hotel men in America, Fred Sterry. It was Gates who insisted that Sterry become the all-important managing director of the new Plaza. When Gates approached him about relocating to Gotham, Sterry replied, "Build me the right kind of hotel and I will come." The right kind of hotel was built. It would cost $12.5 million.

When the new Plaza opened in October 1907, it reflected the determination of Beinecke, Black, and Sterry to surpass the 1904 St. Regis Hotel that Trowbridge & Livingston had designed for John Jacob Astor at Fifth Avenue and East 55th Street, as well as Hiss & Week's new Gotham at Fifth and West 55th, financed by Thomas Fortune Ryan and the powerful Ohio Republican senator Mark A. Hanna. Also in their sights: the 1,000-room Waldorf-Astoria, at Fifth and 34th Street—since 1893, New York's most prestigious hostelry.

The Plaza trio chose Waldorf designer Henry Hardenbergh as their architect because of his excellent reputation. He had won praise as a creator of superb commercial buildings, like Western Union's at the southwest corner of Fifth Avenue and 23rd Street. He had also designed outstanding headquarters for cultural institutions, including the American Fine Arts Society at 215 West 57th Street, now the Art Students League. But

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Truman Capote's Black and White Ball in the Grand Ballroom in 1966

his greatest acclaim resulted from his unfailing good taste in designing hotels and apartment buildings—not just the Waldorf but also the Dakota on Central Park West (the city's first luxury apartment house, which opened in 1880), the opulent French Renaissance Martinique Hotel on West 32nd Street (1897), and the Willard, Washington, D.C.'s most lavish hostelry (1901).

To achieve New York hotel supremacy, the determined triumvirate paid special attention to the Plaza's 800 guest rooms and 17 apartments. For starters, they provided an unprecedented 500 bathrooms. Further, they brought in one of the city's leading decorators, Herter Brothers manager William Baumgarten, to design the palatial State Suite on the second floor, with its views north over Central Park and east over Fifth Avenue. Thanks to the high quality of its guest rooms' decor and to its abundant modern conveniences, the Plaza quickly attracted prominent residents, including Enrico Caruso and John Wanamaker. Over the years, the hotel numbered among its residents Solomon R. Guggenheim, the founder of New York's Guggenheim Museum, and architect Frank Lloyd Wright, who moved into Suite 223–225 during 1953, while overseeing the museum's construction. Wright quickly banished the suite's fussy decor and replaced it with furniture and accessories of his own taste.

he Plaza had yet another ace up its sleeve: the restrained opulence and rich variety of its ground-floor public rooms. In the words of the *New York World*, "Marble and gold and wonderful tapestries vied with each other at dazzling the sight." These rooms offer an unrivaled history of taste in New York and in America over the past century.

The sequence of amazing chambers begins with the hotel's 59th Street entrance, the original lobby. This Louis XVI–style space, enriched with Breccia marble pillars and pilasters embellished with gilt

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bronze, is a rare New York survival of the work of the renowned French decorating firm L. Alavoine et Cie, which opened a Gotham branch in 1893. This is the firm that, in cooperation with another great French decorator, Allard, crafted the interiors of Richard Morris Hunt's Newport masterpieces, Marble House (1892) and the Breakers (1895). Alavoine's job was to supply furnishings for the Plaza lobby, but the decorators probably fabricated important elements of the lobby itself in France and then sent them to New York, just as they did for the interiors of the house that Horace Trumbauer designed for the Strauses (of Macy's fame) on East 71st Street.

The foyer—almost unchanged today, except for the lowered ceiling—would have made the Plaza's first guest, Alfred Gwynne Vanderbilt, feel right at home when he registered at 9 AM on October 1, 1907. His parents were the Mr. and Mrs. Cornelius Vanderbilt II living right next door. Alfred Vanderbilt—who went down with the *Lusitania*, sunk by a German sub in 1915—took a five-room corner suite for himself and his wife and a single room for his servant. On October 7, 1964, 57 years later, the Beatles would register at the same desk during their first trip to the U.S.

Behind the lobby, the long marble corridor linking the

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The Palm Court, around 1910

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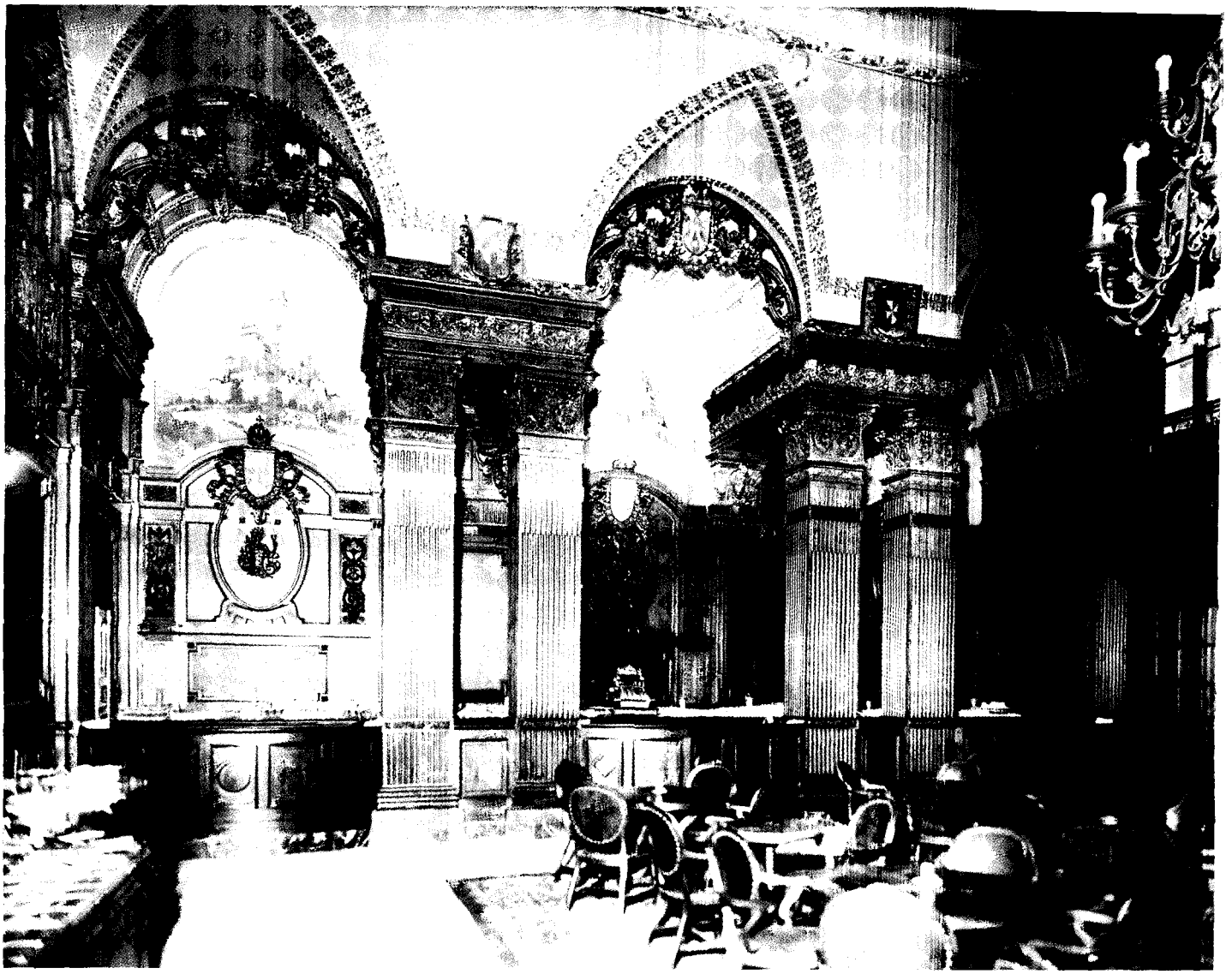

The Oak Room, formerly the Oak Barroom

hotel's great public rooms has also changed little since 1907. Turning to the right and proceeding down the corridor, a visitor enters one of the supreme existing examples of the extravagant pre–World War I Champagne and Lobster Age: the Oak Room, originally known as the Oak Barroom. The only significant alteration of this room since the hotel opened was the Prohibition-era removal of the long wooden bar that once stood beneath the triple arches on its western side. This sensational 20-foot-high chamber, with its dramatic use of dark Flemish oak, is an architectural celebration of nineteenth- and early-twentieth-century America's love affair with the Germany of Brahms, Mendelssohn, and Wagner. It is also a reminder of the vast German emigration to America between 1883 and 1914, which filled New York and other cities with German restaurants and beer halls.

The Oak Room is a superb example of German Renaissance style, as its three paintings of castles on the Rhine and its chandelier decorated with a barmaid hoisting a stein emphatically proclaim. This staggering space recalls the two- and three-deck-high dining rooms that Johannes Poppe designed for German transatlantic steamers of the time, on which Plaza co-founder Bernhard Beinecke, a German immigrant himself, would regularly cross the Atlantic. Designed by Hardenbergh, with the help of Alavoine and the New York furniture maker E. F. Pooley, the Oak Room evokes an era before two world wars forever altered America's view of Germany.

Among those who cherished the room: the glorifier of the American girl, Florenz Ziegfeld, newspaper scribe Damon Runyon, and New York mayor "Beau James" Walker. But no one became more closely associated with it than George M. Cohan. After the composer's death in 1942, the Lambs Club

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affixed a bronze plaque to his favorite booth. It read: "Here in this corner, where he spent many happy hours, The Lambs have placed this tablet in the Oak Room in honor of the most brilliant versatile gentleman in the theatre of his day."

If the Oak Room is Teutonic in taste, the Palm Court, originally the Tea Room, is emphatically Anglo-French. A sumptuous amalgam of mirrors, walls of exquisite Breccia marble, and a floor of gray Istrian marble—the marble of the Italian Veneto, favored by Andrea Palladio for decorative elements in his famous villas—the shimmering space encapsulates the period when Mrs. Astor ruled New York society and ladies in long Worth gowns, their magnificent hats confections of feather and tulle, nibbled cucumber sandwiches while sipping tea from eggshell-thin cups. The creation of noted New York decorators E. Spencer Hall & Co. (with Alavoine's aid), the princely chamber remains mostly unaltered, too, except for the replacement in the 1940s of its glass dome, attributed to Tiffany & Co., with a flat ceiling. The excuse given for this act of vandalism: the need for space for a new air-conditioning unit.

Among the Palm Court's most sensational elements are

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The Edwardian Room, originally the Men's Grill Room, 1907

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MUSEUM OF THE CITY OF NEW YORK, THE WURTS COLLECTION (2)

The original main entrance hall, on 59th Street

the caryatids, reputedly transferred from an Italian palace. If they aren't originals, they're excellent copies, undoubtedly supplied by Alavoine, which had an entire department that furnished antique architectural elements to European and American designers. The Palm Court is especially significant as New York's sole remaining example of an amenity de rigueur in the nineteenth-century palace hotels of Europe. The Palm Courts of two London hotels—the Carlton (1899) and the Savoy (1889)—provided Hardenbergh with his chief models. Fred Sterry was particularly enthusiastic about including a Palm Court in the Plaza's repertoire of rooms, since he reportedly missed the warmer climes of Palm Beach, where he had managed the Royal Poinciana and the Breakers for railroad magnate Henry M. Flagler. The Plaza's Palm Court would gain worldwide fame as a favorite playground for actress and writer Kay Thompson and the impish Eloise of her famous children's books, illustrated by Hilary Knight.

Next comes the 50- by 65-foot chamber at the Plaza's northeast corner, designed in a North European style that owes much to medieval English precedents. Known first as the Grill Room and later as the Fifth Avenue Café, this space received in 1955 its current name: the Edwardian Room. During the Prohibition era, the chamber hosted late-afternoon tea dances, immortalized by the antics of Scott and Zelda Fitzgerald, who at least once splashed about in the Pulitzer Fountain. (The Plaza serves as a key locale in *The Great Gatsby*.)

The Plaza initially reserved the Grill exclusively for males. The room's oak paneling, rising to 12 feet, with artificial Caen stone above, does lend it a sober, "masculine" aspect. But the chief decorative element is the peaked ceiling, with its four double-beamed trusses. The ultimate inspiration for the Grill Room was the banqueting hall typical of English castles, such as Derbyshire's Haddon Hall, dating from the fourteenth century. The Grill Room even boasts, like Haddon Hall, a minstrel's gallery. Providing much of the room's fine detailing were the McNulty Brothers of New York. Though the room underwent superficial redecorations during its various incarnations as the "Green Tulip" and "One CPS," it remains essentially unchanged since its Grill Room days.

From the Plaza Hotel's inception, its founders envisioned its expansion, and they purchased the necessary property on West 58th Street. In 1921, the great firm of Warren & Wetmore—Hardenbergh had died in 1918—designed a 150-room addition, melding with the original structure

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almost seamlessly. Senior partner Whitney Warren had made the firm famous by designing several of New York's Beaux Arts masterpieces, including Grand Central Terminal, the New York Yacht Club, and the James A. Burden House on East 91st Street.

The Plaza addition entailed an important rearrangement of the ground floor, with the hotel's main entrance moving from 59th Street to the Fifth Avenue side. Warren & Wetmore incorporated in the new Plaza lobby (which provided easy access to their addition) many important elements of the dining room that originally occupied the space. But the new entrance forced the closure of the Plaza's popular warm-weather rendezvous, the Terrace, which had stretched along the Fifth Avenue front.

A mezzanine-level Terrace Room soon opened. The handsome space, designed in a restrained French Renaissance style quite different from the opulence typical of the Gilded Age, set the tone for new hotels across the country, such as Holabird & Roche's Palmer House in Chicago (1927). The Terrace Room's magnificent plasterwork and artificial stone was by P. J. Durcan, while the decoration, including the splendid Italian Renaissance–inspired ceiling, was the work of John W. Smeraldi. But the room's true jewels are its five crystal chandeliers—copies of ones that once hung in the Palace of Versailles and that Emperor Paul of Russia bought after the French Revolution. The White Russian émigré Serge Oblensky, Plaza publicist in the 1940s, possessed photographs of the chandeliers and had Charles Winston, brother of famed jeweler Harry Winston, make the copies.

The original grand ballroom was demolished in the 1920s.

The Grand Ballroom of 1927, replacing the hotel's much smaller original ballroom, can accommodate 800 for dinner and 1,000 for dancing. Like the neighboring Terrace Room, the Ballroom is in a French Renaissance style, drawing inspiration in particular from the François I rooms of the Palace of Fontainebleau, a special favorite of the Ecole des Beaux-Arts–trained Whitney Warren. It was in this magnificent hall, on November 28, 1966, that Truman Capote threw his legendary Black and White Ball. The guest of honor was *Washington Post* publisher Kay Graham, but the real reason for the party was the publication of Capote's sensational *In Cold Blood* earlier in the year. The 500 attendees, including Frank Sinatra, Vivien Leigh, and Andy Warhol, wore, as instructed, black or white. The continued existence of this gorgeous chamber was one reason that the brilliant chronicler of New York life, Lucius Beebe, wrote in the April 1949 *Holiday* magazine: "Today there are still standing two superplush examples of hotel style of the 1900s: the Plaza and the St. Regis."

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The living room of a suite, 1907

With large, beautiful hotel ballrooms an endangered species in New York City, it is imperative that the Plaza's Grand Ballroom and the Terrace Room remain public spaces.

One of the most impressive realities about the Plaza Hotel's interior spaces is the outstanding quality of their design and decorative elements—in every era. Consider the Oak Bar, at the hotel's northwest corner. When Conrad Hilton bought the Plaza in the 1940s, the brokerage firm of E. F. Hutton and Company occupied the space. True to his motto, "Make the space pay," Hilton moved Hutton upstairs to a mezzanine office and transformed its former location into the present Oak Bar. In a stroke of genius, he commissioned the ideal artist to decorate the new bar: Everett Shinn (1876–1953) belonged to the so-called Ash-can School of painters, whose other members included John Sloan and William Glackens. They chose as subjects the banks and tenements, the trolleys and restaurants of New York City.

Shinn proved particularly adept in capturing New York's streetscapes and the tinselly glamour of its music halls. In his long career, the painter worked for the architect Stanford White, decorated the Belasco Theater on West 44th Street for David Belasco, and drew wonderful illustrations for *Vanity Fair* magazine. Many consider his three Oak Bar murals, commissioned in 1944, to be his masterpieces. Perhaps no one has portrayed the city in its pre–World War I guise better than Shinn did in his moody nighttime mural on the Oak Bar's east wall. Entitled *Christmas at the Plaza 1907*, it places the viewer on the steps of the hotel, looking eastward

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toward the vanished Cornelius Vanderbilt II mansion. These Shinn murals rank with the city's other great rare works of art created specifically for the structures still sheltering them, such as Augustus Saint-Gaudens's sculpture in the Villard Houses on Madison Avenue and John Lafarge's mural in the Church of the Ascension on Fifth Avenue. With its atmospheric murals, dark panelling, and comfortable leather chairs, the incomparable room embodies the ideal New York hotel *boîte*. The Oak Bar also has a place in the history of cinematography: Cary Grant's kidnappers stole him away from its Table 2 in Alfred Hitchcock's thriller *North by Northwest*.

The official word is that the Plaza is now safe. But walking by the closed hotel and glimpsing empty rooms lighted by bare bulbs where formerly crystal chandeliers dispersed radiance, rooms where tea and cakes, martinis and chateaubriand once gladdened and warmed their hearts, New Yorkers cannot avoid a tinge of trepidation as to what the illustrious old caravansary will be like when it reopens later this year or early next. Let's hope it's back to the future. ❋

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The original main dining room, now the Fifth Avenue entrance, around 1910

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Oh, to

England

It's This Bad

Theodore Dalrymple

England fiddles and burns.

Returning briefly to England from France for a speaking engagement, I bought three of the major dailies to catch up on the latest developments in my native land. The impression they gave was of a country in the grip of a thoroughgoing moral frivolity. In a strange inversion of proper priorities, important matters are taken lightly and trivial ones taken seriously.

This is not the charming or uplifting frivolity of Feydeau's farces or Oscar Wilde's comedies; it is the frivolity of real decadence, bespeaking a profound failure of nerve bound to have disastrous consequences for the country's quality of life. The newspapers portrayed frivolity without gaiety and earnestness without seriousness—a most unattractive combination.

Of the two instances of serious matters taken with levity, the first concerned a 42-year-old barrister, Peter Wareing, attacked in the street while walking home from a barbecue with two friends, a man and a woman. They passed a group of seven teenagers who had been drinking heavily, one of whom, a girl, complained that the barrister and his friends were "staring" at them. Nowadays, English youth of aggressive disposition and porcelain-fragile ego regard such alleged staring as a justified casus belli.

The girl attacked the woman in the other party. When Wareing and his male friend tried to separate them, two of the youths, aged 18 and 16, in turn attacked them. They hit the barrister's friend into some bushes, injuring him slightly, and then knocked the barrister to the ground, knocking him down a second time after he had struggled to his feet. This second time, his head hit the ground, injuring his brain severely. He was unconscious and on life support for two months afterward. At first, his face was so disfigured that his three children were not allowed to see him.

The doctors told his wife, a nurse, that he was unlikely to survive, and she prepared the children for their father's death. She wrote in a journal that she kept as she sat by his bed, "Very scary feeling that all his natural life is gone." Nevertheless, he made an unexpected, though partial, recovery. His memory remains impaired, as does his speech; he may never be able to resume his legal career fully. It is possible that his income will be much lower for the rest of his life than it would otherwise have been, to the great disadvantage of his wife and children.

One of the two assailants, Daniel Hayward, demonstrated that he had learned nothing—at least, nothing of any comfort to the public—after he had ruined the barrister's life. While awaiting trial on bail, he attacked the landlord of a pub and punched him in the face, for which he received a sentence of 21 days in prison.

Before passing sentence for the attack on Wareing, the judge was eloquent in his condemnation of the two youths. "You were looking for trouble and prepared to use any excuse to visit violence on anyone you came by. It is the callousness of this that is so chilling. . . . You do not seem to care that others have been blighted by your gratuitous violence."

You might have thought that this was a prelude to the passing of a very long prison sentence on the two youths. If so, however, you would be entirely mistaken. Both received sentences of 18 months, with an automatic nine-month remission, more or less as of right. In other words, they would serve nine months in prison for having destroyed the health and career of a completely innocent man, caused his wife untold suffering, and deprived three young children of a normal father. One of the perpetrators, too, had shown a

MARYSA DOWLING/MILLENNIUM IMAGES, UK

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In Britain, youths may destroy people's lives with virtual impunity.

complete lack of remorse for what he had done and an inclination to repeat it.

Even at so young an age, nine months is not a very long time. Moreover, when I recall that for youths like these a prison sentence is likely to be a badge of honor rather than a disgrace, I cannot but conclude that the British state is either utterly indifferent to or incapable of the one task that inescapably belongs to it: preserving the peace and ensuring that its citizens may go about their lawful business in safety. It does not know how

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to deter, prevent, or punish. The remarks of the policeman in charge of the case were not encouraging. He said afterward that he hoped that "the sentences . . . send a clear warning to people who think it is acceptable to consume large quantities of alcohol, then assault members of the public in unprovoked attacks." If the law supposes that, as Mr. Bumble said in *Oliver Twist*, "the law is a ass—a idiot."

As for Peter Wareing, even in his brain-damaged state, he had a better appreciation of things. He was evidently a man of some spirit: having been a salesman, he decided to study for the law, supported himself at law school by a variety of manual jobs, and qualified at the bar at the age of 40. The extent of his recovery astounded his neurosurgeon, who attributed it to Wareing's determination and "bloody-mindedness." He is avid to get back to work, but the contrast between the nominal 18-month sentence for his attackers and his own "life sentence," as he called it, of struggle against disability is not lost on him. "If there were real justice," he said, "they would have gone to prison for life." Could any compassionate person disagree?

Perhaps the final insult is that the state is paying for him to have psychotherapy to suppress his anger. "I have this rage inside me for the people who did this," he said. "I truly hate them." Having failed in its primary duty, the state then treats the rage naturally consequent upon this failure as pathological, in need of therapy. On reading Peter Wareing's story, ordinary, decent citizens will themselves feel a sense of impotent rage, despair, betrayal, and abandonment similar to his. Do we all need psychotherapy?

A second case similarly illustrates the refusal of the British state to take the lives of its citizens seriously. An engineer—Philip Carroll, the father of four—was tinkering with his car outside his home. Four drunken youths sat on a wall on his property, and he asked them to leave. They argued with him, and one of them threw a stone at his car. He chased this youth and caught him, but between 20 and 40 more youths loitering drunkenly nearby rallied round, and one 15-year-old hit the engineer to the ground, where he too banged his head and received severe brain damage. Unconscious for 18 days, he needed three operations to survive; and now he too has an impaired memory and might never work again.

According to his parents, the culprit, Michael Kuba-Kuba, felt deeply ashamed of what he had done, but this did not in the least prevent him during the trial from claiming (unsuccessfully, in the event) that he had been acting in self-defense. This does not sound like genuine shame to me but rather an attempt to get away with it. Before passing sentence, the judge said: "I have to try to ensure that the courts will treat incidents like this with great severity, to send out a message to other young people that violence is not acceptable."

Another prelude, you might think, to a stiff sentence—but again you would be wrong. The young man got 12 months, of which he will serve six. Six months for the active life of a man—for having caused 30 or 40 years of disability, as well as incalculable suffering to the disabled man's family! It is not difficult to imagine Kuba-Kuba returning from prison to a hero's welcome, because he had simultaneously gotten away with near-murder and survived the rite of passage that imprisonment now represents. The message the judge sent out to other young people, no doubt unintentionally, was that youths may destroy other people's lives with virtual impunity, for the British state does not care in the least about protecting them or deterring such crimes.

Two aspects of the case went unexamined in the newspapers. The first was that Kuba-Kuba's parents were the owners of a grocery store specializing in African foods, and were deeply religious. The young man doubtless did not grow up in abject poverty, then; nor would he have derived his readiness for violence from anything his parents might have taught him.

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The second was that Kuba-Kuba was a talented athlete, apparently of Olympic standard. He was a promising soccer player, so promising that several major teams were seriously interested in recruiting him. If, as seemed likely, he had made the grade, he would have become a multimillionaire by his early twenties, earning more in a year than most people in a lifetime. Lack of economic prospects and the frustration it entails can hardly explain a propensity to violence in his case, therefore.

We must look elsewhere for the source of his violent conduct. Possibly he was born a sport of nature, a creature biologically destined to violence—no doubt there are such cases. But far more likely was that an aggressive popular culture that glorifies egotistical impulsivity and denigrates self-control influenced him. Although his parents presented him, in their statements, as a paragon of virtue, he already had a conviction for theft, and he clearly hung about with teenagers who drank a lot and made a nuisance of themselves. Carroll confronted the youth who threw the stone precisely because he was exasperated by the unruly behavior that prevailed in his neighborhood, undeterred and unpunished by the state. A senior policeman said after the attack, "We have gangs of young people hanging around on street corners being abusive, intimidating and causing trouble. . . . They don't give a damn about the police or the criminal justice system."

And who can blame them? What deterrent, punishment, vengeance, or protection for society is six months in prison for having injured a man so badly that he did not recognize his wife or children for several months afterward, that he now has poor eyesight, has lost his sense of smell and taste, has to wear a brace on one foot and a hard hat to protect his skull, and says of himself, "I just have no interest in anything or anyone"—having previously been a highly successful man?

Having seen how the British state takes the serious lightly, let us now see how it takes the trivial seriously.

The newspapers reported the case of an Oxford student who, slightly drunk after celebrating the end of his exams, approached a mounted policeman. "Excuse me," said the young man to the policeman, "do you realize your horse is gay?"

This was not a very witty remark, but it was hardly filled with deep malice either. It was, perhaps, a manifestation of the youthful silliness of which most of us have been guilty in our time. And Oxford was once a city in which drunken students often played, and were even expected to play, pranks on the police, such as knocking off their helmets.

The policeman did not think the student's remark was innocent, however. He called two squad cars to his aid, and, in a city in which it is notoriously difficult to interest the police in so trivial a matter as robbery or burglary, they arrived almost at once. Apparently, the mounted policeman thought—if thought is quite the word I seek—that the young man's remark was likely to "cause harassment, alarm or distress." He was arrested and charged under the Public Order Act for having made a "homophobic remark."

The young man spent a night in jail. Brought before the magistrates the following day, he was fined $140, which he refused to pay. The police then sent the case to the equivalent of the district attorney, who brought the student before the courts again but had to admit that there was not enough evidence to prove that his conduct had been disorderly.

The degree to which political correctness has addled British consciousness, like a computer virus, and destroyed all our traditional attachment to liberty, is illustrated by the words of one of the student's friends who witnessed the incident. "[His] comments were . . . in jest," he said. "It was very clear that they were not homophobic." In other words, the friend accepted the premise that certain remarks, well short of incitement to commit violence or any actual crime—words that merely expressed an unpopular or intolerant point of view—would have constituted reasonable grounds for arrest.

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Oh, to be in England

One consequence of the liberal intelligentsia's long march through the institutions is the acceptance of the category of Thoughtcrime. On the other hand, political correctness permits genuine incitement to murder—such as the BEHEAD THOSE WHO INSULT ISLAM placards carried by Muslim demonstrators in London four months after the publication of cartoons of Mohammed in a Danish newspaper—to go completely unpunished. Other people, other customs.

Goodness knows how much time of how many people this episode in Oxford had wasted, and at what cost to the taxpayer—all in a country with the highest rate of crime (that is to say, of real crime) in the Western world. I could not help comparing the alacrity with which the police dealt with the "homophobic" remark with their indifference to an act of arson my wife witnessed shortly before we left England.

She noticed some youths setting fire to the contents of a dumpster just outside our house, a fire that could easily have spread to cars parked nearby. She called the police.

"What do you expect us to do about it?" they asked.

"I expect you to come and arrest them," she said.

The police regarded this as a bizarre and unreasonable expectation. They refused point-blank to send anyone. Of course, if they had promised to make every effort to come quickly but had arrived too late, or even not at all, my wife would have understood and been satisfied. But she was not satisfied with the idea that youths could set dangerous fires without arousing even the minimal interest of the police. Surely, some or all of the youths would conclude that they could do anything they liked, and move on to more serious crimes.

My wife then insisted that the police should at least place the crime on their records. Again, they refused. She remonstrated with them at length, and at considerable cost to her equanimity. At last, and with the greatest reluctance, they recorded the crime and gave her a reference number for it.

This was not the end of the matter. About 15 minutes later, a more senior policeman telephoned to upbraid her and tell her she had been wasting police time with her insistence on satisfaction in so trivial a matter. The police, apparently, had more important things to do than suppress arson. Goodness knows what homophobic remarks were being made while the youths were merely setting a fire that could have spread, and in the process learning that they could do so with impunity.

It is not difficult to guess the reason for the senior policeman's anger. My wife had forced his men to record a crime that they had no intention whatever of even trying to solve (though, with due expedition, it was eminently soluble), and this record in turn meant the introduction of an unwanted breath of reality into the bogus statistics, the manufacture of which is now every British senior policeman's principal task—with the sole exception of enforcing the dictates of political correctness, thereby to head off the criticism levied at them for many decades by the liberal Left—not always without an element of justification. Proving their purity of heart is now more important to them than securing the safety of our streets: and thus Nero fiddled while Rome burned.

Another story in the newspaper then caught my eye: the government wanted to ban smoking in British prisons.

At first sight, this might seem like a serious rather than a frivolous idea. More than nine-tenths of prisoners smoke, and, if they continue to do so, about a half of them will die prematurely as a result. The evidence that smoking is bad for the health has long since been overwhelming and incontrovertible. Therefore, the government could reasonably claim that the proposed ban was evidence of its solicitude for the welfare of the most despised of all sections of society, prisoners. And after all, what could be more serious, less frivolous, than saving lives, or trying to do so?

In general, I am not sentimental about the rights of prisoners. I don't think the proposed ban infringes any of their rights; but it seems to me

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that there are plenty of reasons for treating prisoners decently and humanely other than the observance of their supposed rights. Decency and humanity are goods in themselves, after all. The proposed ban was not only hypocritical but gratuitously cruel and inhumane, and likely to prove ineffective into the bargain. But it would be wrong even if effective.

Smoking is not illegal in Britain, and the government derives large revenues from the consumption of tobacco, indeed far larger than the profits of the tobacco companies. It uses these revenues not to lessen the taxes of nonsmokers but merely as one among many other sources of revenue. Although high taxation on tobacco does discourage smoking, that is not, and never was, its primary aim.

At bottom, the proposal looks like the arbitrary bullying of a defenseless population in a fit of Pecksniffian moral enthusiasm. It is to deprive that population of a small privilege long accepted by custom and usage. And, of course, the moral enthusiasts of the government will not bear the practical cost of enforcing the ban; the prison wardens will. The proposal is an example of the soft and creeping totalitarianism that comes with unctuous offers of benefits and avowals of purity of intention, rather than the boot-in-the-face variety of Orwell's description. It is the insinuation of the government into the nooks and crannies of everyday life, on the pretext that people are incapable of deciding anything for themselves. Everyone is a child for whom the government is in permanent loco parentis (except children, of course, who can consent to sex at age 16 and are to be given the vote at the same age, if Chancellor Brown has his way).

The newspapers confirmed what I had long perceived before I left Britain: that the zeitgeist of the country is now one of sentimental moralizing combined with the utmost cynicism, where the government's pretended concern for the public welfare coexists with the most elementary dereliction of duty. There is an absence of any kind of idealism that is a necessary precondition of probity, so that bad faith prevails almost everywhere. The government sees itself as an engineer of souls (to use the phrase so eloquently coined by Stalin with regard to writers who, of course, were expected to mold Homo Sovieticus by the power of their words). Government thus concerns itself with what people think, feel, and say—as well as with trying to change their freely chosen habits—rather than with performing its one inescapable duty: that of preserving the peace and ensuring that citizens may go about their lawful business in confidence and safety. It is more concerned that young men should not smoke cigarettes in prison or make silly jokes to policemen than that they should not attack and permanently maim their elders and betters.

One definition of decadence is the concentration on the gratifyingly imaginary to the disregard of the disconcertingly real. No one who knows Britain could doubt that it has very serious problems—economic, social, and cultural. Its public services—which already consume a vast proportion of the national wealth—are not only inefficient but completely beyond amelioration by the expenditure of yet more money. Its population is abysmally educated, to the extent that in a few more years Britain will not even have a well-educated elite. An often cynical and criminally minded population has been indoctrinated with shallow and gimcrack notions—for example, about social justice—that render it singularly unfit to compete in an increasingly competitive world. Not coincidentally, Britain has serious economic problems, even if the government has managed so far—in the eyes of the world, at least—to paper over the cracks. Unpleasant realities cannot be indefinitely disguised or conjured away, however.

Therefore I have removed myself: not that I imagine things are much better, only slightly different, in France. But one does not feel the defects of a foreign country in quite the same lacerating way as the defects of one's native land; they are more an object of amused, detached interest than of personal despair.

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Letters

Endangered Speech

To the editor:

In "The Plot to Shush Rush and O'Reilly" [Winter 2006], Brian C. Anderson mentions the Pew Charitable Trusts' role in foisting campaign-finance reform on America. I wonder if he knows Pew's history.

"J. Howard Pew of Sun Oil . . . . was a tireless champion of free markets and individualism," wrote R. W. Bradford in *Liberty* magazine. "In 1957, he created the J. Howard Pew Freedom Trust, with instructions that it use its funds to 'acquaint the American people' with 'the evils of bureaucracy,' 'the values of the free market,' and 'the paralyzing effects of government controls on lives and activities of people.' . . . In accordance with those wishes, the Freedom Trust funded mostly libertarian and conservative activities, as long as its board consisted of Pew family members and friends.

"But as the family members and friends died off, they were replaced by others who gradually reoriented its spending, first toward mainstream activities, then gradually toward the very activities that the trust had been set up to oppose. In 1994 it gave $6 million to left-liberal causes and just $150,000 to conservative or libertarian efforts." *Michael Geer*

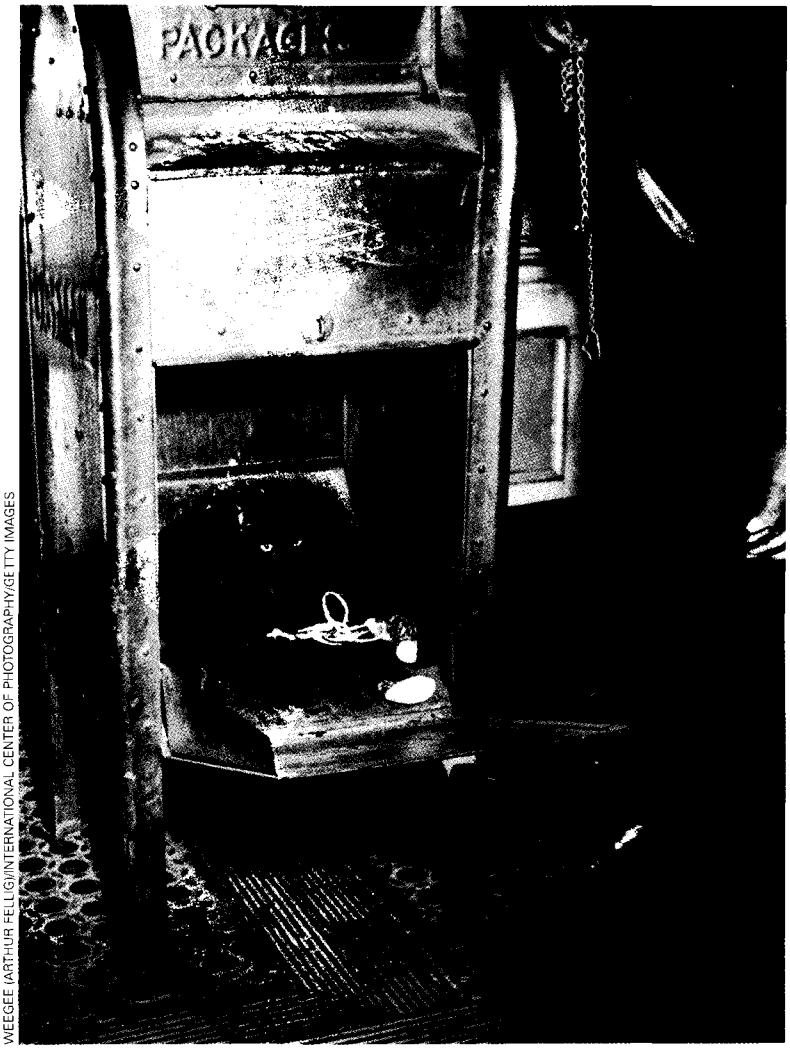
Grand Junction, CO

Too Testy?

To the editor:

In "City's Pupils Get More Hype than Hope" [Winter 2006], Sol Stern labors to diminish the December news that New York City students outperformed their peers in other large cities on reading and math tests administered by the National Assessment of Educational Progress—results that emphatically confirm our upward trend in achievement.

Mr. Stern's argument shifts throughout. He concludes, for example, that our fourth-graders outperformed their big-city peers nationwide in reading only because other cities have experienced more "white flight." At the same time, he blames lower performance by white students to explain away New York's shrinking achievement gap. He fails entirely to credit better minority performance for the shrinking gap, despite the fact (which he neglects to report) that our black,



WEEGEE (ARTHUR FELLIG)/INTERNATIONAL CENTER OF PHOTOGRAPHY/GETTY IMAGES

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Letters

Hispanic, and low-income fourth-graders outperformed similar students not just in other large cities but in the nation as a whole.

In all, 57 percent of New York City fourth-graders scored at or above NAEP's Basic level, which represents "partial mastery" of necessary skills. The number needs to be far higher, of course, and Mr. Stern contends that our gains are "not exactly headline-grabbing news." But moving children from functional illiteracy to Basic-level literacy at a higher rate than the rest of the nation *is* news and *has* put New York in the headlines of the *New York Times*. *Education Week* praised New York and quoted a NAEP board member as saying that our reading strategies (which Mr. Stern scorns) had "elevated the achievement of children." Indeed, on the day the NAEP scores were announced, Secretary of Education Margaret Spellings applauded New York's reading programs for Spanish-speaking children.

This is the story that Mr. Stern does not mention. As he rightly notes, we (and much of the country) face real challenges, particularly in improving performance in middle schools. But we also hope that he is right in arguing that fourth-grade reading is the key indicator of future success. If so, the future holds considerable promise for New York City students.

Stephen J. Morello
Director of Communications
New York City Dept. of Education

Sol Stern responds:

It's strange to receive a reply from a flack who merely restates the same phony arguments that my article exposed, as if sufficiently dogged repetition might be enough to exhaust opponents and carry the day. But the arguments remain as false and misleading as before.

My article made an argument about a critical policy issue facing the city. Contrary to expectations, mayoral control has not brought greater accountability or transparency to the school system. Instead of using his power over a $17 billion education empire to spread accurate information about public education, Mayor Bloomberg has treated schools as campaign props and launched a slick PR blitz proclaiming instant success in the classroom. And now, rather than engaging this argument up front—say, by providing evidence that the mayor supports transparency and welcomes open debate of his education policies—the Bloomberg administration is once again blowing the same stale smoke about "record gains" on test scores.

Mr. Morello starts by repeating the administration's disinformation on the results of the 2005 NAEP tests. He says that our students "outperformed their peers in other large cities" and then concludes that these results "emphatically confirm our upward trend in achievement." But anyone can see that the first claim has nothing to do with the second, just as anyone who actually reads the NAEP report will see that Mr. Morello is dissembling. Of course New York City students scored higher than those in Detroit, Chicago, and Los Angeles; they always have. The Bloomberg administration certainly can't take credit for that. But with the exception of a small improvement in fourth-grade math (which was matched or bested by most other cities), our students did *not* show gains on the NAEP tests between 2003 and 2005. In the crucial area of fourth-grade reading, where the Bloomberg administration invested tens of millions of dollars in a dubious program called "Balanced Literacy," there was no gain at all.

No independent source supports the administration's claim to have brought about historic improvements in test scores. Mr. Morello's reference to praise from an unnamed NAEP board member is just more PR spin. That board member is Sheila Ford, who did not speak officially for the NAEP board. Ms. Ford also happens to be a protégée and booster of Teachers College professor Lucy Calkins, the progressive-education ideologue who has multimillion-dollar contracts to run Balanced Literacy teacher training for the city. As for the comments by Margaret Spellings, I pointed out in my article that because of its interest in showing that the No Child Left Behind Act is working, the Bush administration has been putting the brightest gloss on student achievement across the country.

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Letters

But New York City and its children derive no benefit from ignoring the faults of a school system walled off from scrutiny.

The Marriage Gap

To the editor:

Kay S. Hymowitz, in "Marriage and Caste" [Winter 2006], dances around several issues that I believe are relevant to whether people get married: religious influence, traditional moral values, and political demographics. I would be willing to wager that "values voters" are overwhelmingly more likely to be married with children. It isn't just a marriage gap; it's a values gap.

Scott Tuttle
Via e-mail

To the editor:

I have been volunteering for a crisis-pregnancy center for 13 years, and I think that Kay S. Hymowitz's analysis is accurate. The single moms I meet are not interested in marrying the fathers of their children. They are devoted to their children but seem oblivious to the essential role that a father plays; when the children are older and it is more obvious, it will be too late. Also, when women come in with crisis pregnancies, very often they will consider only two choices: abortion and raising the child. *Frances Moyer*
Via e-mail

To the editor:

Kay S. Hymowitz attributes virtually all of the maturity that results in stable marriages, and in the benefits thereby conferred on children, to women. The only reference to men involves economics: they provide financial stability for women, who can then confer social benefits on the children.

Reading the article, one might conclude that a bequest from a rich uncle would do as much as, if not more than, a caring father. *Evan W. Joshua*
Via e-mail

Kay S. Hymowitz responds:

Mr. Tuttle and I agree that we are a nation divided about marriage, but I believe that attributing this division to a lack of traditional values generates more heat than light. Certainly to say that the women Ms. Moyer describes are deficient in values seems wide of the mark. These poor mothers highly prize their children; if they didn't, they wouldn't be so averse to adoption. But they do not understand how important it is for their children to grow up with their own married parents. Like much of the country for the last several decades, they are confused about the purpose of marriage, which above all is to tie a father to his children and to his children's mother.

I hope that this answer reassures Mr. Joshua. If my article doesn't give enough credit to fathers, it's not because I don't take their role seriously. In fact, my article explicitly argues against the "strength-in-numbers theory," the idea that marriage matters simply because it means two incomes and two sets of hands. But any analysis of the marriage gap has to focus on mothers for the simple reason that the vast majority of single parents are mothers.

Street Smarts

To the editor:

Nicole Gelinas writes: "[M]any of the city's new private-sector jobs, including those in health care and education, are taxpayer-supported, so they are wealth consumers, not wealth creators, like Wall Street jobs" ["Gotham Needs Wall Street; Does Wall Street Need Gotham?," Winter 2006].

All those wealth creators learned how to create wealth somewhere. Let's think of education not just as an expense but as the best kind of investment for producing wealth creators. *Scott Marriott*
Via e-mail

Nicole Gelinas responds:

Mr. Marriott posits that workers in education should not be labeled "wealth consumers," since they educate people who go on to create wealth in the private sector. This is indeed how the system should work, but in New York, at least, it doesn't. New York public schools—held captive by the teachers' union and by union-backed politicians—don't produce great wealth, if the quality of the education they provide is any indication. But they certainly consume it.

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Contributors

Theodore Dalrymple, a physician, is a contributing editor of *City Journal* and the Dietrich Weismann Fellow at the Manhattan Institute. His current book, *Our Culture, What's Left of It,* is the second collection of his *City Journal* essays.

Nicole Gelinas is a contributing editor of *City Journal* and the Searle Freedom Trust Fellow at the Manhattan Institute. Gelinas is a Chartered Financial Analyst.

Philip K. Howard, a lawyer and civic leader in New York, is the author of *The Death of Common Sense.* He is the chair of Common Good, a bipartisan legal-reform group, and is writing a book about restructuring American society.

Kay S. Hymowitz, a contributing editor of *City Journal* and the William E. Simon Fellow at the Manhattan Institute, is the author of *Liberation's Children* and *Ready or Not.*

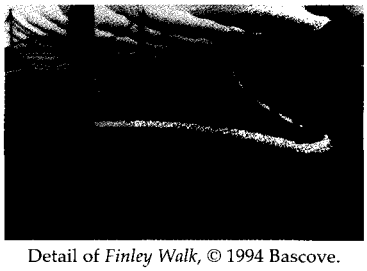
John Kekes is the author of many books, most recently *The Roots of Evil* and *The Illusions of Egalitarianism.* He is Research Professor at the State University of New York, Albany.

David Garrard Lowe is president of the Beaux Arts Alliance, an organization dedicated to celebrating cultural links between the United States and France. He has lectured widely in America and Europe, and is the author, most recently, of *Art Deco New York.*

Steven Malanga is a contributing editor of *City Journal* and a senior fellow at the Manhattan Institute. His current book, *The New New Left,* is a collection of his *City Journal* essays.

David Schoenbrod is a professor at New York Law School, a senior fellow at the Cato Institute, and the author of *Saving Our Environment from Washington* and, with Ross Sandler, of *Democracy by Decree.*

Mark Steyn writes about politics, arts, and culture in many publications, from *The Atlantic Monthly* to *The Australian.* His books include *The Face of the Tiger,* a collection of essays about the world since September 11.



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Vanishing Decencies

Theodore Dalrymple

Strolling with my dog down the road in the village in North Wales where I have been staying for the last month, I passed a small boy aged about six, dressed in a green school uniform, who was walking on the top of a stone wall, his hands outstretched to form airplane wings. His mother was behind him, watching.

"That's a nice little dog," he said in a strong Welsh accent.

"Yes, he is," I replied.

"My dog's black and white and a little smaller than yours," he said.

"What's he called?" I asked.

"Jack," he said, and laughed, returning to his mother, who was smiling.

I walked on. For some reason that I could not at first fathom, this slight exchange had a strong emotional impact upon me. It was as if a weight had fallen from my shoulders. What was it that had so moved me?

Then I realized: it was the little boy's uninhibited innocence. In the city he would already have learned the shame of unsophistication that has both destroyed childhood and lengthened adolescence into a permanent condition: for precocity in the ways of popular culture and street life swiftly gives way to arrested development.

It's all too easy in the heartachingly beautiful landscapes of North Wales, and in the human warmth of its villages, to descend to dithyrambs about the simple life. But the genuinely simple life here, before the advent of modernity and such amenities as hot water, was harsh and difficult. No doubt narrow-mindedness and bigotry abounded, too.

The chapels—Sinai, Bethel, Zion, and so on—are closing, converted into luxury homes or garden centers or even restaurants (I can recall when restaurants remained almost unknown in North Wales). And in the towns, despite the flourishing of the ancient Welsh language—the oldest in Europe with a continuous poetic tradition—the prevailing culture is the deliberately lumpen and grungy culture of modern Britain: pop music leaking out of the shops into the street like poisonous exhaust, young women, however fat and suety, exposing midriffs and pierced belly buttons to the appalled gaze of the middle-aged. After a certain age, you don't go to the center of Welsh towns on a Saturday night any more than you would in English provincial cities. In Transylvania after dark, it was Dracula who kept you indoors; in Britain, it is the young who do so.

A friend, a valiant Welsh-speaking teacher, describes how, in a school in a small town in North Wales (there are no towns but small ones in North Wales), the pupils would turn their backs on her as she entered the classroom. They did not want to learn anything, because they thought they knew it all already. One of her problems was to stop the girls from applying makeup during class. In the war between makeup and the communication of knowledge, makeup won.

She gave up teaching and opted for the easier life of showing tourists round the old jail of Beaumaris, the beautiful little town on the Menai Straits that boasts the only remaining original wooden treadmill in Britain. In the summer, hordes of beer-bellied and heavily tattooed visitors arrive, usually the worse for wear, and demand to see the gallows. If the local economy began to flag, a few public executions would doubtless revive it quickly.

Even in the country lanes around Bangor, evidence abounds of the collapse of self-control. Empty plastic bottles, cans, and fast-food wrappings litter the hedgerows and ditches. No one, it seems, can go farther than a few yards without refreshment.

In the elegant Victorian seaside resort Llandudno, a real antiquarian bookseller runs a shop. He deals mainly in books of Welsh interest and in the Welsh language. Sometimes he has very rare books, of which only one or two other copies may exist in the world. He tries to interest Welsh universities and public libraries in them, but they always reply that the books are too obscure for anyone ever to want to look at them. The books, it turns out, end up on the shelves of American institutions.

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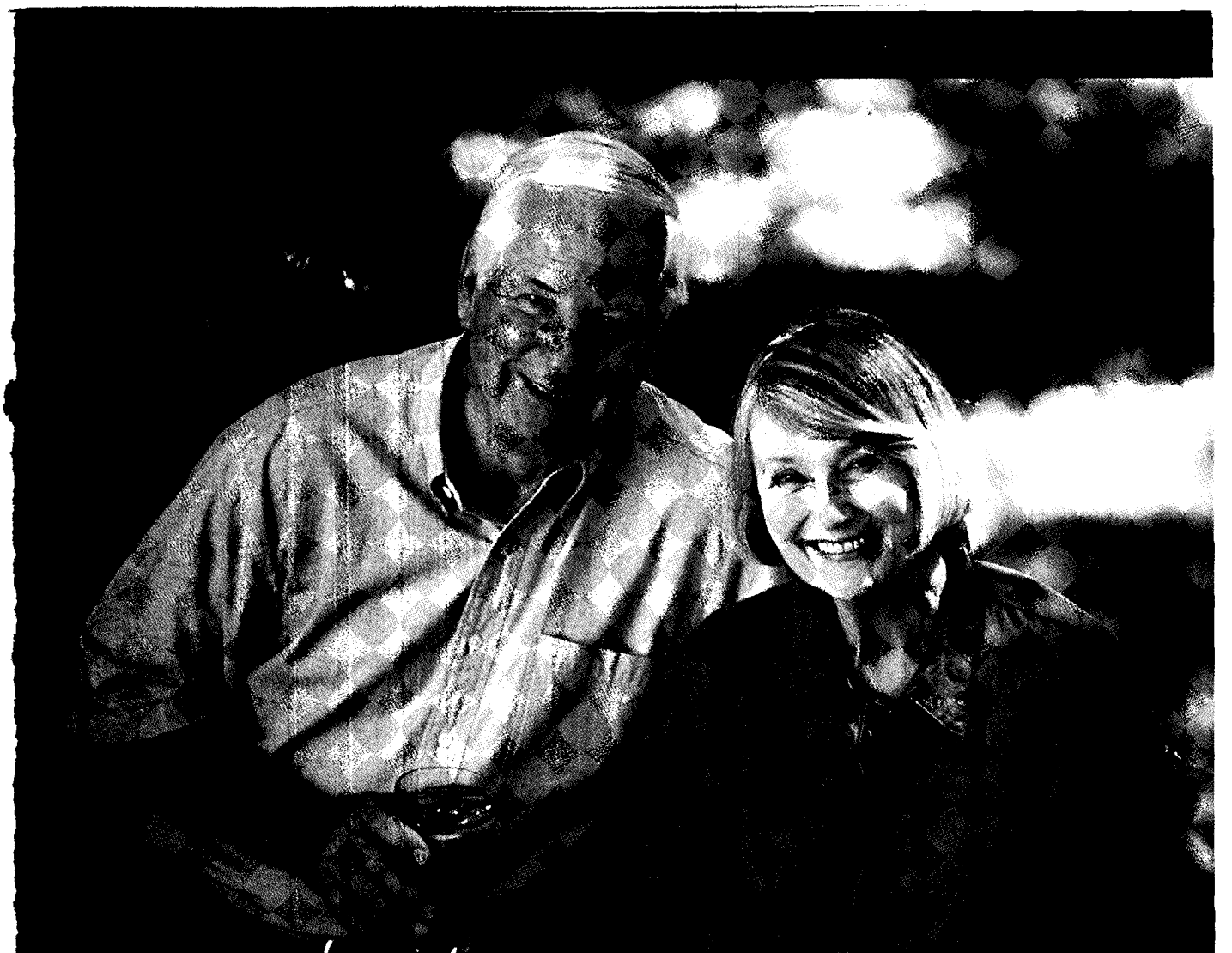

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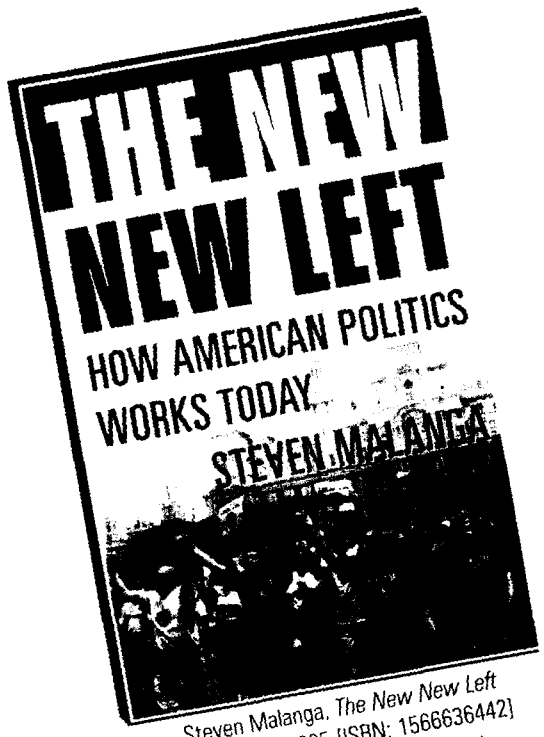

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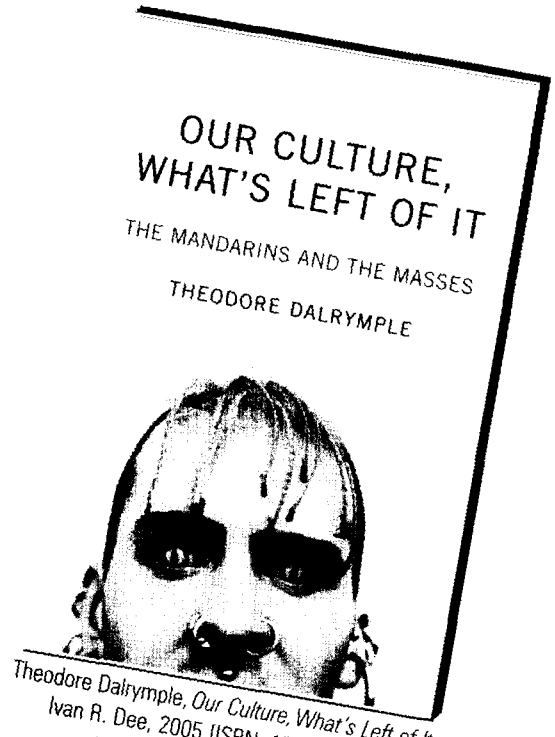

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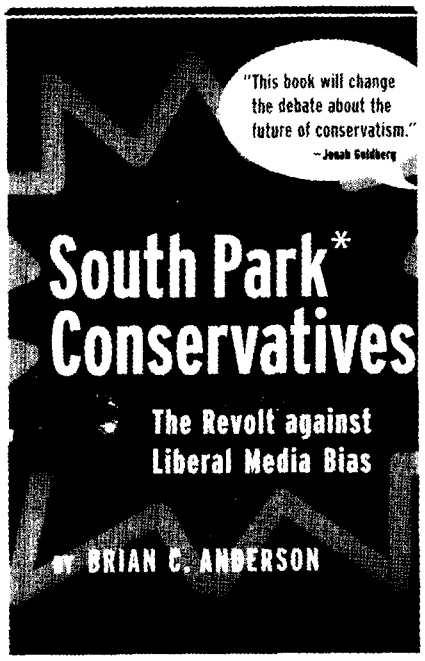
-Roger Kimball, *The New Criterion*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